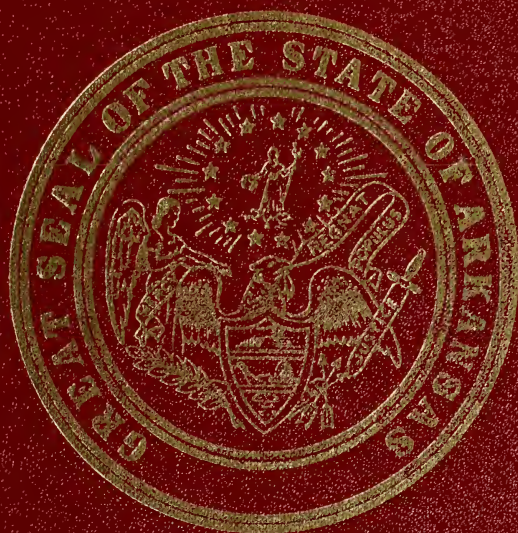


# ARKANSAS CODE OF 1987 ANNOTATED

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# ARKANSAS CODE OF 1987 ANNOTATED



## VOLUME 23B 2012 Replacement TITLE 23: PUBLIC UTILITIES AND REGULATED INDUSTRIES (CHAPTERS 60-73)

*Prepared by the Editorial Staff of the Publisher*

Under the Direction and Supervision of the  
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## Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2012 Fiscal Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2012 Ark. LEXIS 240 (May 17, 2012) and 2012 Ark. App. LEXIS 466 (May 16, 2012).

Federal Supplement through May 21, 2012.

Federal Reporter 3d Series through May 21, 2012.

United States Supreme Court Reports through May 21, 2012.

Bankruptcy Reporter through May 21, 2012.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 64, p. 655.

ALR Fed. 2d through Volume 46, p. 473.

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## **User's Guide**

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.





# **TITLE 23**

## **PUBLIC UTILITIES AND REGULATED INDUSTRIES**

(CHAPTERS 1-29 IN VOLUME 22; CHAPTERS 30-59 IN VOLUME 23A; CHAPTERS 74-87 IN VOLUME 24A; CHAPTERS 88-115 IN VOLUME 24B)

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- 99. HEALTH CARE PROVIDERS.
- 100. STATE INSURANCE DEPARTMENT CRIMINAL INVESTIGATION DIVISION TRUST FUND ACT.
- 101. CREDITOR-PLACED INSURANCE.
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114. CHARITABLE BINGO AND RAFFLES.

115. ARKANSAS SCHOLARSHIP LOTTERY ACT.

***SUBTITLE 3. INSURANCE***

**Effective Dates.** Acts 1959, No. 148,  
§ 697: 12:01 A.M., Jan. 1, 1960.

**CASE NOTES****Waiver of Premiums.**

The insurance code among other things gave the Insurance Commissioner the power to approve the form of policies; however, that act did not change the case law applicable to the waiver of premiums

during disability. *J.C. Penney Life Ins. Co. v. Warren*, 268 Ark. 1132, 599 S.W.2d 415 (Ct. App. 1980).

**Cited:** *Cherry v. Tanda, Inc.*, 327 Ark. 600, 940 S.W.2d 457 (1997).

**CHAPTER 60****GENERAL PROVISIONS**

## SECTION.

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23-60-111. Civil liability.

**Publisher's Notes.** As to treatment of certificates, licenses and forms in use on the effective date of the insurance code, see Acts 1959, No. 148, §§ 691-693.

**Effective Dates.** Acts 1968 (1st Ex. Sess.), No. 24, § 10: Feb. 19, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that benefits under firemen's relief and pension funds are inadequate; that additional funds are necessary to properly

finance the firemen's relief and pension funds in order that benefits to firemen and their dependents may be increased to meet the increasing cost of living and in order to assure that competent persons may be retained in the various fire departments to provide the fire protection that is essential to public health and safety in this State; and, that this Act will provide additional needed funds and will increase benefits under the firemen's relief and



pension fund. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1973, No. 66, § 12: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 624, § 5: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the public health and welfare of the citizens of the State of Arkansas will be benefitted by allowing the citizens of this State to secure the benefits provided by vision service plans; that said vision service plans provide no risk to the consuming public; and that it is in the best interest of the people of the State of Arkansas to allow said vision service plans to operate whereby the licensed optometrist or ophthalmologist is regulated by his or her respective State board. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 685, § 3: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: April 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus

Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 496, § 24: Mar. 26, 2007. Emergency clause provided: "It is found



and determined by the General Assembly of the State of Arkansas that the incompatibility of acts of the Eighty-Sixth General Assembly presents difficult compliance issues for the administration of debt cancellation agreements; that in order to avoid a disruption in commerce associated with compliance with other debt cancellation legislation, the enactment of Sections 22 and 23 of this act is immediately necessary. Therefore, an emergency is declared to exist and Sections 22 and 23 of

this act being immediately necessary for the preservation of the public peace, health, and safety, Sections 22 and 23 shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**Am. Jur.** 43 Am. Jur. 2d, Ins., § 1 et seq.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Insurance, 5 U. Ark. Little Rock L.J. 153.

Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

### CASE NOTES

**Cited:** Cherry v. Tanda, Inc., 327 Ark. 600, 940 S.W.2d 457 (1997).

## 23-60-101. Title.

This code constitutes the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 1; A.S.A. 1947, § 66-2001.

**Meaning of "this code".** Acts 1959, No. 148, codified as §§ 23-60-101 — 23-60-105, 23-60-106, 23-60-107, 23-60-108, 23-60-110, 23-61-101 — 23-61-112, 23-61-201 — 23-61-206, 23-61-301 — 23-61-307, 23-61-401, 23-61-402, 23-62-101 — 23-62-108, 23-62-201, 23-62-202, former 23-62-203, 23-62-204, 23-62-205, 23-63-101 [repealed], 23-63-102 — 23-63-104, 23-63-201 — 23-63-216, 23-63-301, 23-63-302, 23-63-401 — 23-63-404 [repealed], 23-63-601 — 23-63-604, 23-63-605 — 23-63-609 [repealed], 23-63-610 — 23-63-613, 23-63-701, 23-63-801 — 23-63-833, 23-63-835 — 23-63-837, 23-63-838 [repealed], 23-63-901 — 23-63-912, 23-63-1001 — 23-63-1004, 23-64-101 — 23-64-103, 23-64-201 — 23-64-205, 23-64-206 [repealed], 23-64-207, 23-64-208 [repealed], 23-64-209, 23-64-210, 23-64-211 — 23-64-213 [repealed], 23-64-214 — 23-64-221, 23-64-222 [repealed], 23-64-227, 23-64-228 [transferred], 23-64-229 [transferred], 23-65-

101 — 23-65-104, 23-65-201 — 23-65-205, 23-65-301 — 23-65-319, 23-66-201 — 23-66-214, 23-66-301 — 23-66-306, 23-66-308 — 23-66-311, 23-66-313, 23-66-314, 23-68-101 — 23-68-113, 23-68-115 — 23-68-132, 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, 23-69-149 — 23-69-156, 23-70-101 — 23-70-124, 23-71-101 — 23-71-116, 23-72-101 — 23-72-122, 23-73-101 — 23-73-107, 23-73-108 [repealed], 23-73-109 [repealed], 23-73-110 — 23-73-116, 23-74-101 — 23-74-141 [revised], 23-75-101 — 23-75-116, 23-75-117 [repealed], 23-75-118 — 23-75-120, 23-79-101 — 23-79-106, former 23-79-107, 23-79-109 — 23-79-128, 23-79-131 — 23-79-134, 23-79-202 — 23-79-210, 23-81-101 — 23-81-117, 23-81-120 — 23-81-136, 23-81-201 — 23-81-213, 23-82-101 — 23-82-118, 23-84-101 — 23-84-111, 23-85-101 — 23-85-131, 23-86-101 — 23-86-104, 23-86-106 — 23-86-109, 23-86-112, 23-87-101 — 23-87-119, 23-88-101, 23-89-101, 23-89-102, 26-57-601 — 26-57-605, 26-57-607, 26-57-608, and 26-57-610.

**23-60-102. Definitions.**

As used in the Arkansas Insurance Code, unless the context otherwise requires:

(1)(A)(i) "Insurance" is any agreement, contract, or other transaction whereby one party, the "insurer", is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary", dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such a happening, a material interest that will be adversely affected by the happening of such an event.

(ii) A "fortuitous event" means any occurrence or failure to occur that is, or is assumed by the parties to be, to a substantial extent beyond the control of either party.

(B) "Insurance" shall, for purposes of subtitle 3 of this title, be deemed to include "annuities", which are agreements by insurers to make periodic payments that continue during the survival of the measuring life or lives under the agreements or for a specified period.

(C) "Reinsurance" is a contract under which an originating insurer, called the "ceding" insurer, procures insurance for itself in another insurer, called the "assuming" insurer or reinsurer, with respect to part or all of an insurance risk of the originating insurer.

(D)(i) "Insurance" shall not include a debt cancellation agreement.

(ii) "Debt cancellation agreement" is a loan term or contractual arrangement modifying a loan term dealing with motor vehicles under which a lender agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the lender upon the occurrence of a specified event other than the death or disability of the borrower. The agreement may be separate from or a part of other loan documents.

(2) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance;

(3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and every legal entity;

(4) "Commissioner" means the Insurance Commissioner of this state;

(5) "Department" means the State Insurance Department;

(6) A "domestic" insurer is one formed under the laws of this state;

(7) A "foreign" insurer means one formed under the laws of any jurisdiction other than this state;

(8) An "alien" insurer means one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths;

(9) Except where distinguished by context, "foreign" insurers include also "alien" insurers;

(10)(A) When used in a context signifying a jurisdiction other than the State of Arkansas, "state" means any state, district, territory, commonwealth, or possession of the United States.



(B) For purposes of conforming the Arkansas Insurance Code to comply with the provisions of the North American Free Trade Agreement, “state” shall also be deemed to include Canada and the Republic of Mexico, as appropriate;

(11) An “authorized” insurer means one duly authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state;

(12) An “unauthorized” insurer is one not authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state;

(13) “Transact” with respect to insurance includes any of the following:

(A) Solicitation and inducement;

(B) Preliminary negotiations;

(C) Effectuation of a contract of insurance;

(D) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it;

(14) “Wet marine and foreign trade insurance”, with the exception of chapter 67 of this title, shall include only:

(A) Insurances upon vessels, crafts, hulls, and of interests therein or with relation thereto;

(B) Insurance of marine builders’ risks, marine war risks, and contracts of marine protection and indemnity insurance;

(C) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and

(D) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment, or reshipment incident thereto.

**History.** Acts 1959, No. 148, §§ 2-9, 69; 1968 (1st Ex. Sess.), No. 24, § 5; 1975, No. 450, § 1; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, §§ 66-2002 — 66-2009, 66-2302; Acts 1993, No. 901, § 5; 1995, No. 1272, § 1; 1997, No. 1000, § 1; 2007, No. 496, § 23.

**Publisher’s Notes.** Acts 1959, No. 148, § 69, is also codified as §§ 26-57-601 — 26-57-605, 26-57-607.

The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2007 amendment added (1)(D) and made a minor punctuation change.

## RESEARCH REFERENCES

**Ark. L. Notes.** Copeland, A Brief Survey of Some Important 1991 and 1992

Insurance Law Decisions, 1992 Ark. L. Notes 85.

## CASE NOTES

## ANALYSIS

Foreign Insurer.

Insurance.

—Debt Cancellation Contract.

—Determinative Factors.

Insurer.

**Foreign Insurer.**

An Arkansas court has authority under the Arkansas long-arm statute and the due process clause, U.S. Const. Amend. 14, to exercise jurisdiction over a foreign insurance company in a suit by the insured to recover under the insurance policy's uninsured motorist clause for damages arising out of an accident in Arkansas with an uninsured Arkansas motorist. *Szalay v. Handcock*, 307 Ark. 232, 819 S.W.2d 232 (1991).

**Insurance.**

Memberships in automobile motor club come within the definition of insurance. *Arkansas Motor Club, Inc. v. Arkansas Emp. Sec. Div.*, 237 Ark. 419, 373 S.W.2d 404 (1963).

The services and benefits provided by motor clubs to their members constitute insurance under this section. *Arkansas Motor Club, Inc. v. Arkansas Emp. Sec. Div.*, 237 Ark. 419, 373 S.W.2d 404 (1963).

A factoring agreement was held to be a contract for the purchase of an account receivable, even though the account was an open account, and did not constitute a contract for insurance of credit as defined in this section. *Manhattan Factoring Corp. v. Orsburn*, 238 Ark. 947, 385 S.W.2d 785 (1965).

Contracts of insurance should receive a practical, reasonable and fair interpretation consonant with the apparent object and intent of the parties in the light of their general object and purpose. *Tri-State Ins. Co. v. Sing*, 41 Ark. App. 142, 850 S.W.2d 6 (1993).

Claimant could not sue the health system under the direct-action statute because the health system's pooled comprehensive liability program did not meet the statutory definition of insurance; the program was not mandatory, and claimant offered no evidence that a profit motive existed in the program or that the program was actuarially sound. *Sowders v.*

*St. Joseph's Mercy Health Ctr.*, 368 Ark. 466, 247 S.W.3d 514 (2007), superseded by statute as stated in, *Archer v. Sisters of Mercy Health Sys.*, 375 Ark. 523, 294 S.W.3d 414 (2009).

**—Debt Cancellation Contract.**

Contracts with debt cancellation clauses will be considered contracts of insurance, and thus invalid, when: (1) the cancellation clause is mandatory, (2) the purchaser pays a fee for inclusion of the clause, (3) profit-making by the vendor is a major reason for including the clause, (4) risk of loss is placed on the purchaser, and (5) the vendor is not licensed or authorized to be in the business of insurance. *Douglas v. Dynamic Enters., Inc.*, 315 Ark. 575, 869 S.W.2d 14 (1994).

A contract entitled "Total Loss-Vehicle Purchase Contract Waiver," which could be purchased for a weekly or monthly fee, which provided that car dealer would extinguish the outstanding debt on a vehicle purchased and financed through it, if the vehicle were wrecked and totalled, or stolen through no fault or negligence of the purchaser, was a debt cancellation contract, and was insurance as defined by this section. *Douglas v. Dynamic Enters., Inc.*, 315 Ark. 575, 869 S.W.2d 14 (1994).

**—Determinative Factors.**

Whether a particular contract or activity constitutes the business of insurance can be determined by the following factors: (1) whether the plan is mandatory, (2) whether a profit motive exists in offering the plan, and (3) whether the plan is intended to be actuarially sound. *Douglas v. Dynamic Enters., Inc.*, 315 Ark. 575, 869 S.W.2d 14 (1994); *Cherry v. Tanda, Inc.*, 327 Ark. 600, 940 S.W.2d 457 (1997).

**Insurer.**

Union benefit fund held to constitute an insurance company. *Bost v. Masters*, 235 Ark. 393, 361 S.W.2d 272 (1962).

Health system did not meet the statutory definition of an insurer under the Arkansas Insurance Code because it was not in the business of entering into contracts of insurance. *Sowders v. St. Joseph's Mercy Health Ctr.*, 368 Ark. 466, 247 S.W.3d 514 (2007), superseded by statute as stated in, *Archer v. Sisters of*

Mercy Health Sys., 375 Ark. 523, 294 S.W.3d 414 (2009).

**Cited:** West & Co. v. Sykes, 257 Ark. 245, 515 S.W.2d 635 (1974); Waire v. Joseph, 308 Ark. 528, 825 S.W.2d 594 (1992);

Dynamic Enters. Inc. v. Taylor, 38 Ark. App. 184, 832 S.W.2d 278 (1992); Matson, Inc. v. Lamb & Assocs. Packaging, 328 Ark. 705, 947 S.W.2d 324 (1997).

### 23-60-103. Application of code.

Unless otherwise expressly provided for in the Arkansas Insurance Code, no provision of the Arkansas Insurance Code shall apply with respect to the following entities:

(1) Domestic stipulated premium insurers, as identified in § 23-70-101 et seq., concerning stipulated premium insurers except as stated in those sections;

(2) Assessment life, health, and accident insurers, as identified in § 23-72-102 et seq., concerning assessment life and disability insurers except as stated in those sections;

(3) Farmers' mutual aid associations or companies, as identified in § 23-73-102 et seq., concerning farmers' mutual aid associations or companies except as stated in those sections, but excepting the requirements for fraudulent insurance acts prevention, codified in § 23-66-501 et seq., and including the payment of assessments due from insurers and other licensees under the State Insurance Department Criminal Investigation Division Trust Fund Act, § 23-100-101 et seq., which shall apply to farmers' mutual aid associations or companies;

(4) Fraternal benefit societies, as identified in § 23-74-101 et seq., concerning fraternal benefit societies except as stated in those sections; and

(5) Nonprofit vision service plan corporations composed of at least fifty (50) participating optometrists or ophthalmologists licensed by the State of Arkansas to provide vision care services on a prepaid basis when each licensed optometrist or ophthalmologist is subject to the rules and regulations of the professional's respective state board and when each participating licensed optometrist or ophthalmologist agrees to assume responsibility for completion of the provisions of the vision care services contracted for so that no element of risk is incurred by any subscriber group or person.

**History.** Acts 1959, No. 148, § 11; 1983, No. 624, § 1; A.S.A. 1947, § 66-2011; Acts 2001, No. 1604, § 1.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.



**23-60-104. Exceptions.**

The Arkansas Insurance Code shall not apply with respect to burial associations governed by §§ 23-78-101 — 23-78-119, and 23-78-121 — 23-78-125, and amendments thereto.

**History.** Acts 1959, No. 148, § 12; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-2012. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

**23-60-105. Particular provisions prevail.**

Provisions of the Arkansas Insurance Code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matters in general.

**History.** Acts 1959, No. 148, § 13; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-2013. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

**CASE NOTES****Surplus Lines Insurance Law.**

The specific provisions of the Arkansas Surplus Lines Insurance Law § 23-65-301 et seq. control over the general statute

of § 23-79-117. Arkansas-Oklahoma Gas Corp. v. Lukis Stewart Price Forbes & Co., 306 Ark. 425, 816 S.W.2d 571 (1991).

**23-60-106. Prior acts, offenses, rights, etc., not affected.**

The Arkansas Insurance Code shall not impair or affect any act done; offense committed or right accruing, accrued, or acquired; or liability, penalty, forfeiture, or punishment incurred prior to the time the Arkansas Insurance Code takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted, as fully and to the same extent as if the Arkansas Insurance Code had not been passed.

**History.** Acts 1959, No. 148, § 695; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-2010n. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

**CASE NOTES**

**Cited:** Matson, Inc. v. Lamb & Assocs. Packaging, 328 Ark. 705, 947 S.W.2d 324 (1997).

### 23-60-107. Captions and headings not to affect meaning.

The scope and meaning of any provision shall not be limited or otherwise affected by the caption or heading of any chapter, section, or provision.

**History.** Acts 1959, No. 148, § 14; A.S.A. 1947, § 66-2014.

### 23-60-108. Penalty generally.

Unless a greater penalty is provided by another law of this state, a violation of a statute or regulation enforceable by the Insurance Commissioner is punishable:

(1) By the refusal, suspension, revocation, or nonrenewal of a license or certificate of authority; and

(2) A fine no greater than one thousand dollars (\$1,000) per violation, not to exceed fifty thousand dollars (\$50,000) in any six-month period.

**History.** Acts 1959, No. 148, § 15; **Amendments.** The 2009 amendment A.S.A. 1947, § 66-2015; Acts 2009, No. 726, § 4. rewrote the section.

## CASE NOTES

**Cited:** Northwestern Nat'l Life Ins. Co. v. Heslip, 309 Ark. 319, 832 S.W.2d 463 (1992).

### 23-60-109. Penalty for false or misleading statements.

Any person who files any statement, application, form, or other document required to be filed by the Arkansas Insurance Code knowing the statement or information contained in the document to be false or misleading in any material respect shall be guilty of a Class D felony.

**History.** Acts 1973, No. 66, § 1; A.S.A. 1947, § 66-2016; Acts 2005, No. 1994, § 435. Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

## CASE NOTES

### ANALYSIS

In General.  
Evidence.

#### In General.

The term "this code" as used in this section includes §§ 23-69-105 to 23-69-141 [For a full definition of "this code," see the "meaning of this code" note following § 23-60-101.]. *Hale v. State*, 343 Ark. 62, 31 S.W.3d 850 (2000), cert. denied, *Hale v.*

*Arkansas*, 532 U.S. 1039, 121 S. Ct. 2001, 149 L. Ed. 2d 1003 (2001).

#### Evidence.

Evidence was sufficient to support a conviction for violating the statute since (1) the state proved that the defendant filed a document; (2) the state proved that the document was required to be filed by the Insurance Code; and (3) the state proved that the defendant knew the statement to be false or misleading at the time

it was filed. *Hale v. State*, 343 Ark. 62, 31 Arkansas, 532 U.S. 1039, 121 S. Ct. 2001, S.W.3d 850 (2000), cert. denied, *Hale v.* 149 L. Ed. 2d 1003 (2001).

### **23-60-110. Compliance with code required.**

No person shall transact a business of insurance in Arkansas, or relative to a subject of insurance resident, located, or to be performed in Arkansas, without complying with the applicable provisions of the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 10; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-2010. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### **23-60-111. Civil liability.**

(a) In the absence of fraud or bad faith, no civil cause of action of any nature shall arise against the person for supplying any information:

(1) Relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials or their agents and employees;

(2) Relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of the insurance laws of this state; or

(3) Furnished in reports to the State Insurance Department, National Association of Insurance Commissioners, or any organization established to detect and prevent fraudulent insurance acts or their agents, employees, or designees.

(b) Neither the Insurance Commissioner nor any employee of the department, in the absence of fraud or bad faith, shall be subject to civil liability, and no civil cause of action of any nature shall arise against the person by virtue of the publication of any report or bulletin related to the official activities of the department.

(c) Nothing in this section is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

**History.** Acts 1987, No. 685, § 1; 2001, Information Center, § 12-12-201 et seq. No. 1604, § 2. State liability, § 21-9-201 et seq.

**Cross References.** Arkansas Crime

## **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey — Insurance, 10 U. Ark. Little Rock L.J. 587.

## **CHAPTER 61**

## **STATE INSURANCE DEPARTMENT**

### **SUBCHAPTER.**

#### **1. GENERAL PROVISIONS.**



SUBCHAPTER

2. EXAMINATION OF INSURERS, ETC.
3. PROCEEDINGS.
4. FEES.
5. JURISDICTION OVER HEALTH BENEFIT PROVIDERS.
6. RISK MANAGEMENT ACT.
7. STATE INSURANCE DEPARTMENT TRUST FUND ACT.

RESEARCH REFERENCES

**Am. Jur.** 43 **Am. Jur. 2d, Ins.,** § 17 et seq.      **C.J.S.** 44 **C.J.S., Ins.,** § 36 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-61-101. State Insurance Department — Continuation — Assignment of space.
- 23-61-102. Insurance Commissioner.
- 23-61-103. Insurance Commissioner — Powers and duties.
- 23-61-104. Deputies, assistants, and other employees — Appointment — Duties.
- 23-61-105. Commissioner, deputies, assistants, and other employees — Expense allowance.
- 23-61-106. Commissioner, deputies, assistants, and other em-

SECTION.

- employees — Financial interest prohibited — Exception.
- 23-61-107. Records.
- 23-61-108. Rules and regulations.
- 23-61-109. Orders and notices.
- 23-61-110. Enforcement generally.
- 23-61-111. Enforcement — Foreign decrees.
- 23-61-112. Annual report.
- 23-61-113. Disclosure of nonpublic personal information.
- 23-61-114. Annual report regarding malpractice rates.
- 23-61-115. Policyholder's Bill of Rights.

**A.C.R.C. Notes.** Acts 2003 (2nd Ex. Sess.), No. 78, § 1, provided: "Purpose.

(a) The purpose of this act is to provide for the administration and regulation of the Public Elementary and Secondary School Insurance Program and the School Motor Vehicle Insurance Program by the State Insurance Department and to amend various provisions of Arkansas Code §§ 6-20-1501 to 6-20-1515 and §§ 6-21-701 to 6-21-711. The responsibilities of the Department of Education for the regulation and administration of the Public Elementary and Secondary School Self-Insurance Program and the School Motor Vehicle Self-Insurance Program shall cease and its responsibilities shall be transferred to the State Insurance Department. The programs shall be known as the Public Elementary and Secondary

School Insurance Program and the Public School Motor Vehicle Insurance Program.

"(b) The statutory authority, powers, duties, functions, including budgeting and purchasing, records, property, unexpended balances of appropriations, allocations, or other funds, and authorized positions but not the personnel of the Public Elementary and Secondary School Self-Insurance Program and the School Motor Vehicle Self-Insurance Program are transferred to the department. The transfer shall include each program's prescribed powers, duties, and functions, including but not limited to rulemaking, regulation, and licensing; and the rendering of findings, orders and adjudications.

"(c) All forms for the administration and regulation of the programs, all trust agreements and arrangements, and all

documents presently in use which have been previously approved by the Department of Education or the State Board of Education shall continue to be approved until otherwise determined by the Insurance Commissioner.

“(d) The Insurance Services Division of the Department of Education is transferred to the State Insurance Department by a type two (2) transfer under § 25-2-105. The transfer shall include the authorized positions but shall not include the personnel of the division.”

**Effective Dates.** Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 723, § 33: Mar. 25, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of

the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 538, § 2: Mar. 1, 2001. Emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly, that there is an immediate need for the Insurance Department to enter into agreements for the sharing and receiving of confidential information from other governmental entities in order to further enhance the regulatory capabilities of the department and to comply with Gramm-Leach-Bliley. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1239, § 3: Apr. 2, 2001. Emergency clause provided: “It is found and determined by the General Assembly that sweeping changes are occurring in financial services both nationally and internationally; that Arkansas consumers should have access to the most choices and the most sophisticated products in the modern marketplace while being protected from mistreatment in the marketplace; that this act shall be broadly construed to effect these purposes; and that this act is immediately necessary to enhance the ability of this state to efficiently and effectively regulate the business of insurance by authorizing the State Insurance Commissioner to coordinate regulatory activities and administration with other states and their appropriate regulatory officials and with the federal government with respect to the regulation of insurance. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed



by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1619, § 2: Apr. 16, 2001. Emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly that there is an immediate need for the Insurance Commissioner to enact regulations providing for the treatment of nonpublic financial and health information by licensees. Such action is in the best interest of the public, in that such regulations will protect the public’s personal nonpublic financial and health information, and will also assist the states in achieving uniformity in the regulation of the insurance business. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor

may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

### 23-61-101. State Insurance Department — Continuation — Assignment of space.

(a) There is continued at the seat of government of this state an office or department designated as the State Insurance Department.

(b) Suitable space shall be assigned for the use of the department.

(c)(1)(A) The purpose of the department is to serve and protect the public interest by the equitable enforcement of the state’s laws and regulations affecting the insurance industry.

(B) The primary mission of the department shall be consumer protection through insurer solvency and market conduct regulation, and fraud prosecution and deterrence.

(2) Nothing in this subsection shall be construed to limit the Insurance Commissioner’s authority as enumerated in other provisions of the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 16; A.S.A. 1947, § 66-2101; Acts 2001, No. 610, § 1.

**A.C.R.C. Notes.** Acts 2007, No. 684, § 1, provided: “Effective January 1, 2008, the Arkansas Title Insurance Agents’ Licensing Board established by the Arkansas Title Insurance Agents’ Licensing Act, § 23-103-101 et seq., is abolished and its powers and duties are trans-

ferred to the State Insurance Department by a type 3 transfer under § 25-2-106. The transfer shall include the authorized positions of the board but shall not include the personnel of the board.”

**Publisher’s Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

Acts 1971, No. 38, § 16, transferred the State Insurance Department into the Department of Commerce. However, Acts 1983, No. 691 abolished the Department of Commerce, and § 4 of that act provided

that the State Insurance Department should be an independent agency and should function in the same manner as it functioned prior to its transfer to the Department of Commerce.

### **23-61-102. Insurance Commissioner.**

(a) The head of the State Insurance Department shall be an Insurance Commissioner appointed by the Governor with the advice and consent of the Senate. No person shall be eligible for appointment as commissioner unless a citizen of this state and at least thirty (30) years of age.

(b) The commissioner shall serve at the pleasure of the Governor.

(c) The commissioner shall take and subscribe to the usual oath of office.

(d) The commissioner shall receive the salary provided by law.

(e)(1) At the time of taking office, the commissioner shall execute bond to the State of Arkansas in the sum of fifty thousand dollars (\$50,000) for the faithful performance of his or her duties.

(2) The form and surety of the bond shall be subject to the approval of the Governor and Auditor of State.

(3) An authorized surety insurer shall be the surety on the bond.

(f)(1) The commissioner shall have an official seal.

(2) All certificates issued by the commissioner shall bear his or her seal.

(3) Every document executed by the commissioner pursuant to law and bearing his or her official seal shall be received as evidence in any court or other tribunal and may be recorded in the same manner and with like effect as deeds regularly acknowledged.

**History.** Acts 1959, No. 148, §§ 17, 18; A.S.A. 1947, §§ 66-2102, 66-2103; Acts 2009, No. 149, § 1.

**A.C.R.C. Notes.** The operation of subsection (e) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

**Amendments.** The 2009 amendment rewrote (b).

### **23-61-103. Insurance Commissioner — Powers and duties.**

(a) The Insurance Commissioner shall enforce the provisions of the Arkansas Insurance Code and shall execute the duties imposed upon him or her by the Arkansas Insurance Code.

(b) The commissioner shall have the powers and authority expressly conferred upon him or her by or reasonably implied from the provisions of the Arkansas Insurance Code.

(c) The commissioner is authorized to enter into regulatory cooperation and coordination agreements with other governmental regulatory agencies within and outside of this state with respect to the regulation of the business of insurance, including, but not limited to:



- (1) Licensing of insurance companies;
- (2) Licensing of producers;
- (3) Regulation of premium rates and policy forms;
- (4) Regulation of insurer solvency and insurance receiverships; and
- (5) Other matters relating to the effective regulation of the business of insurance.

(d)(1) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he or she may deem proper to determine whether any person has violated any provision of the Arkansas Insurance Code or to secure information useful in the lawful administration of any such provision. The cost of these additional examinations or investigations shall be borne by the state.

(2) Notwithstanding any other provision of law, active investigatory or examination files as maintained by the State Insurance Department shall be deemed confidential and privileged and shall not be made open to the public until:

(A) The matter under investigation or examination is deemed closed by the commissioner; or

(B) Referred to any law enforcement authority and made subject to public disclosure by the authority.

(3) At such time that any matter investigated or examined has been set for an administrative hearing pursuant to § 23-61-304 or § 25-15-208, investigation or examination information shall be made available as provided in § 25-15-208.

(4) Unless otherwise exempted by subdivision (d)(5) of this section, actuarial formulas and assumptions certified by a qualified actuary are confidential and privileged when submitted to comply with a rate or form filing requirement of the department, including, but not limited to, any actuarial report:

(A) Required, submitted, or attached to any filing made to the department under § 23-67-211, for rate and form filings of an insurer, or to those submitted under § 23-63-216 for annual statements of an insurer; or

(B) Submitted to the department to comply with any form and rate filing requirement imposed by statute or rule upon licensed insurers, health maintenance organizations, fraternal benefit societies, and hospital and medical service corporations.

(5)(A) Subdivisions (d)(2) and (d)(4) of this section do not prohibit release by the commissioner of active investigatory or examination files:

(i) At the discretion of the commissioner, to a person or persons that the commissioner determines to be aggrieved or affected by the examination or investigation; or

(ii) To state, federal, or local law enforcement or regulatory agencies or private organizations established for tracking or preventing insurance violations, or to the National Association of Insurance Commissioners.

(B) This section shall have no effect on or application to any of the filings gathered or compiled in compliance with § 23-63-1201 et seq.

(6) Release of active investigatory or examination files under subdivision (d)(5) of this section does not abrogate or modify the confidential nature of investigatory or examination files under subdivision (d)(2) of this section.

(e)(1) The commissioner may delegate to any assistant, deputy, examiner, or employee of the department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial, discretionary, or of whatever character which may be vested by the Arkansas Insurance Code in the commissioner.

(2) The commissioner shall be responsible for the official acts of his or her deputy, assistant, examiner, or employee acting in the commissioner's name and by his or her authority.

(f)(1)(A) To the extent not otherwise governed by the Trade Practices Act, § 23-66-201 et seq., § 23-65-101 et seq., or a law or rule providing specific injunctive powers to the commissioner, if it appears to the commissioner upon sufficient grounds or evidence that any person has engaged in or is about to engage in any act or practice constituting a violation of an insurance law, rule, or order of this state, the commissioner may summarily order the person to cease and desist from the act or practice.

(B)(i) Upon the entry of the cease and desist order under subdivision (f)(1)(A) of this section, the commissioner shall promptly notify the person who is the subject of the order:

(a) That the order has been entered; and

(b) Of his or her right to a hearing concerning the order.

(ii) The notification shall include a copy of the order or a detailed statement of the reasons for the order.

(2)(A) A hearing shall be held under § 23-61-301 et seq. on the written request of the person aggrieved by the cease and desist order under subdivision (f)(1)(A) of this section if the request is received by the commissioner within thirty (30) days of the date of the entry of the order or if ordered by the commissioner.

(B) If no hearing is requested and none is ordered by the commissioner, the order shall remain in effect until it is modified or vacated by the commissioner.

(C) If a hearing is requested or ordered, the commissioner after notice and opportunity for hearing:

(i) May affirm, modify, or vacate the order; and

(ii) Shall conduct the hearing within ten (10) days of the date a hearing is requested or ordered by the commissioner.

(3)(A) After issuance of an order under this subsection, the commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin the act or practice and to enforce compliance with the insurance laws of this state.

(B) However, without issuing such an order, the commissioner may apply directly to the Pulaski County Circuit Court for relief.

(4) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

(5)(A) The commissioner may also seek and the appropriate court shall grant, upon proper showing, any other ancillary relief that may be in the public interest.

(B) The relief may include:

(i) The appointment of a receiver, temporary receiver, or conservator;

(ii) A declaratory judgment;

(iii) An accounting;

(iv) A disgorgement of profits;

(v) The assessment of a fine not to exceed the total amount of money, property, or other value received in connection with an insurance law violation; or

(vi) Any other relief appropriate to protect the public interest.

(6) The commissioner is not required to post a bond as a condition for obtaining relief under this subsection.

(7) This subsection does not prohibit or restrict the informal disposition of a proceeding or allegations that might give rise to a proceeding by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this subsection.

**History.** Acts 1959, No. 148, §§ 22, 25; A.S.A. 1947, §§ 66-2107, 66-2110; Acts 1997, No. 956, § 1; 1999, No. 453, § 1; 2001, No. 1239, § 2; 2009, No. 717, § 1; 2009, No. 726, § 5.

**A.C.R.C. Notes.** Acts 2007, No. 684, § 1, provided: "Effective January 1, 2008, the Arkansas Title Insurance Agents' Licensing Board established by the Arkansas Title Insurance Agents' Licensing Act, § 23-103-101 et seq., is abolished and its powers and duties are transferred to the State Insurance Department by a type 3 transfer under § 25-2-106. The transfer shall include the authorized positions of the board but shall not include the person-

nel of the board."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2009 amendment by No. 726 substituted "(d)(5)" for "(d)(4)" in (d)(6) and made minor stylistic changes.

The 2009 amendment by No. 717 added (f).

**Cross References.** Suspension, etc., of agent's or company's license for Insurance Code violations, § 23-60-108.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

## 23-61-104. Deputies, assistants, and other employees — Appointment — Duties.

(a) The Insurance Commissioner may appoint such assistants and deputies and such examiners, attorneys, clerks, stenographers, and other personnel as may be necessary to assist him or her in the discharge of the duties imposed upon him or her under the Arkansas



Insurance Code and as may be authorized by law. All such personnel shall devote their entire business time to their duties in the State Insurance Department.

(b) The commissioner may employ an actuary on a consulting or full-time basis to perform such duties as the commissioner may designate.

(c) The commissioner may at any time terminate the appointment, designation, or employment of any assistant, deputy, examiner, attorney, actuary, clerk, or other employee.

(d) The compensation for all such personnel so appointed or employed shall be as fixed by law.

(e) The commissioner may contract for and procure on a basis of fee such independently contracting examination, actuarial, technical, and other professional services as he or she may from time to time require for the discharge of his or her duties.

**History.** Acts 1959, No. 148, § 19; A.S.A. 1947, § 66-2104; Acts 2001, No. 1604, § 3. Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

Insurance Code, referred to in this section,

### **23-61-105. Commissioner, deputies, assistants, and other employees — Expense allowance.**

(a) In addition to compensation for their services, the Insurance Commissioner, his or her deputies, assistants, and other employees shall be paid their actual and necessary expenses as authorized by the commissioner and incurred by them in the performance of their duties, subject to such limitations as may be otherwise applicable pursuant to law.

(b) An itemized statement of all expenses for which payment is being claimed shall be certified by the claimant and attached to the expense voucher.

**History.** Acts 1959, No. 148, § 20; A.S.A. 1947, § 66-2105.

### **23-61-106. Commissioner, deputies, assistants, and other employees — Financial interest prohibited — Exception.**

(a) The Insurance Commissioner or any deputy, examiner, assistant, or employee of the commissioner shall not be financially interested, directly or indirectly, in any insurer, insurance agency, or insurance transaction, except as:

(1) A policyholder or claimant under a policy;

(2) A grantor of a mortgage or similar instrument on the person's residence to an entity regulated under the Arkansas Insurance Code if done under customary terms and in the ordinary course of business; or

(3) A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed, provided that the commissioner may make reasonable exceptions upon full and complete written disclosure to the commissioner of the exact nature and extent of the otherwise impermissible financial interest and adhering to any and all reasonable restrictions as the commissioner may impose upon the terms and conditions of employment.

(b) Notwithstanding the requirements of subsection (a) of this section, the commissioner may employ or retain, from time to time, insurance actuaries, technicians, or other professional personnel who are independently practicing their professions even though similarly employed or retained by insurers or others.

(c) The commissioner or any assistant, deputy, examiner, or other employee of the commissioner shall not be given nor receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided pursuant to law for any service rendered or to be rendered as commissioner, deputy, examiner, or employee, or in connection therewith.

**History.** Acts 1959, No. 148, § 21; A.S.A. 1947, § 66-2106; Acts 1991, No. 723, § 1; 1999, No. 304, § 1; 2001, No. 1604, § 4.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No.

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

Acts 1991, No. 723, § 9 provided: "Compliance with Sections 1 through 8 of this Act shall be required for all examinations commenced on and after January 1, 1992."

## 23-61-107. Records.

(a)(1) The Insurance Commissioner shall enter, in permanent form, records of his or her official transactions, examinations, investigations, and proceedings and keep these records in his or her office.

(2) These records and insurance filings in his or her office shall be open to public inspection, except as otherwise provided in the Arkansas Insurance Code with respect to particular records or filings.

(3) Confidential data and reports provided to the commissioner by the National Association of Insurance Commissioners, including, but not limited to, insurers' Insurance Regulatory Information System ratios and examiner team synopses, shall be deemed privileged communications. These data and reports shall not be open to public inspection and shall not be admissible in evidence in any action or proceeding, other than those brought by the commissioner, nor shall any insurers, agents, or brokers, which may be the subject of the confidential reports, have a cause of action against the commissioner or his or her deputies, examiners, assistants, or employees or against the National Association of Insurance Commissioners, or its members, subscribers, officers, directors, assistants, or employees by reason of the furnishing of any such information to the commissioner.

(4) The commissioner shall maintain as confidential, and not subject to subpoena, financial information regarding material transactions of



insurers, as defined in § 23-63-1403 or other applicable laws or regulations promulgated by the commissioner.

(5)(A) In order to assist in the performance of the commissioner's duties, the commissioner may:

(i) Share documents, materials, or other information, including confidential and privileged documents, materials, or information, with other state, federal, and international regulatory and legislative agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(ii) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory, legislative, and law enforcement officials of other foreign, alien, or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(iii) Enter into agreements governing sharing and use of information consistent with this subsection.

(B) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized by this subsection.

(C) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(b) The commissioner may destroy or otherwise dispose of records and filings in his or her office in accordance with such rules and procedures as provided by other applicable laws.

(c)(1) Upon request of any person and upon payment of the applicable fee, the commissioner shall give a certified copy of any record in his or her office which is then open to public inspection.

(2) Copies of original records or documents in his or her office certified by the commissioner shall be received in evidence in all courts as if they were originals.

(3) The commissioner's certificate as to the authority of any person to transact insurance shall be evidence in all courts of the facts set forth therein.

(d) In lieu of original signatures of records and filings, as required by pertinent provisions of the Arkansas Insurance Code, which are permitted to be reproduced in electronic, diskette, or computer-readable form acceptable to the commissioner, the commissioner in his or her

discretion may accept electronic, electronic facsimile-transmitted, or computer-readable signatures subject to such conditions and terms as he or she may determine.

**History.** Acts 1959, No. 148, §§ 23, 24; A.S.A. 1947, §§ 66-2108, 66-2109; Acts 1987, No. 456, § 1; 1995, No. 1272, § 2; 1999, No. 119, § 1; 2001, No. 538, § 1; 2001, No. 1604, §§ 5, 6.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Cross References.** Freedom of Information Act of 1967, § 25-19-101 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-61-108. Rules and regulations.

(a)(1) The Insurance Commissioner may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code.

(2) No rule or regulation shall extend, modify, or conflict with any law of this state or the reasonable implications thereof.

(3) Any rule or regulation affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by § 23-61-304.

(4) If reasonably possible, the commissioner shall set forth the proposed rule or regulation or amendment in or with the notice of hearing.

(5) No rule or regulation as to which a hearing is required under this subsection shall be effective until after it has been on file as a public record in the commissioner's office, and otherwise as provided by law, for at least ten (10) days.

(b)(1) The commissioner shall have the authority to promulgate rules and regulations necessary for the effective regulation of the business of insurance or as required for this state to be in compliance with federal laws.

(2) The commissioner shall have the authority to coordinate regulatory activities and administration with other states and their appropriate regulatory officials and with the federal government with respect to the regulation of insurance.

(c) In addition to any other penalty provided, willful violation of any rule or regulation shall subject the violator to such denial, suspension, or revocation of certificate of authority or license as may be applicable under the Arkansas Insurance Code for violation of the provision to which the rule or regulation relates.

(d)(1) The commissioner is authorized to employ the standards and requirements set forth in publications recited in the Arkansas Insurance Code, as those publications existed on January 1, 2001, and



adopted and published by the National Association of Insurance Commissioners or by other authors in the regulation of insurance, including, but not limited to, the Valuation of Securities Manual, the examiners handbook, the Accounting Practices and Procedures Manual, and the Annual Statement Instructions as published by the National Association of Insurance Commissioners.

(2) The publications identified in subdivision (d)(1) of this section and others recited in and throughout § 23-60-101 et seq. are hereby adopted as they existed on January 1, 2001.

(3) The commissioner is authorized and empowered to promulgate regulations for the purposes of adopting all or part of other publications of the National Association of Insurance Commissioners or publications by other authors if the commissioner determines that such an action is in the best interest of the public.

(4) Upon the mailing of written notice by the commissioner to all domestic reporting entities of promulgation and publication by the National Association of Insurance Commissioners or other authors of amendments, revisions, or modifications to any publication previously adopted by the commissioner in the Arkansas Insurance Code, such published amendments, revisions, or modifications shall become effective on the date designated by the commissioner in the written notice, which date shall not be earlier than eight (8) months after the date of mailing of the notice.

(e) The commissioner is authorized and empowered to adopt regulations for the purpose of modifying, amending, or revising any publication promulgated by the National Association of Insurance Commissioners or other authors, or any published amendments, modifications, or revisions to any such publications if the commissioner determines that such an action is in the best interest of the public. In such an event the effective date of any modification, amendment, or revision shall be the effective date of the regulation.

**History.** Acts 1959, No. 148, § 26; A.S.A. 1947, § 66-2111; Acts 2001, No. 1239, § 1; 2001, No. 1604, § 7.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

## CASE NOTES

**Cited:** Eubanks v. National Fed'n Student Protection Trust, 290 Ark. 541, 721 S.W.2d 644 (1986).

**23-61-109. Orders and notices.**

(a) Orders and notices of the Insurance Commissioner shall be effective only when in writing signed by the commissioner by his or her authority.

(b) Every order shall state its effective date and shall concisely state:

(1) Its intent or purpose;

(2) The grounds on which based; and

(3) The provisions of the Arkansas Insurance Code pursuant to which action is taken or proposed to be taken, but failure to so designate all applicable provisions shall not deprive the commissioner of the right to rely thereon.

(c) Except as may be provided in the Arkansas Insurance Code respecting particular procedures, an order or notice may be given by service upon or delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to the person at his or her principal place of business as last of record in the department.

**History.** Acts 1959, No. 148, § 27; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-2112. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

**CASE NOTES**

**Cited:** Drummond Citizens Ins. Co. v. United States, 298 F. Supp. 692 (E.D. Ark. 1969).

**23-61-110. Enforcement generally.**

(a)(1)(A) The Insurance Commissioner may institute such suits or other legal proceedings as may be required for enforcement of any provisions of the Arkansas Insurance Code.

(B) In addition, the commissioner may intervene in any civil suit or administrative hearing initiated by another party against any person or entity regulated by the commissioner under the Arkansas Insurance Code, which suit or proceeding directly relates to the financial condition and solvency of such a person or entity.

(C) Nothing in this subsection shall be construed to limit the commissioner's authority as enumerated in other provisions of the Arkansas Insurance Code.

(2) If the commissioner has reason to believe that any person has violated any provision of the Arkansas Insurance Code for which criminal prosecution would be in order, he or she shall so inform the prosecuting attorney in whose district any purported violation may have occurred or the Criminal Investigation Division.

(3) If the commissioner finds that any person has violated any provision of the Arkansas Insurance Code, he or she may order restitution of actual losses to affected persons in addition to the denial,

suspension, or revocation of any license or certificate or the imposition of any administrative or civil penalty.

(b) The commissioner may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

**History.** Acts 1959, No. 148, § 28; 1979, No. 942, § 1; A.S.A. 1947, § 66-2113; Acts 2001, No. 610, § 2; 2005, No. 1697, § 3.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory

actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### 23-61-111. Enforcement — Foreign decrees.

(a) As used in this section and § 23-61-110:

(1) "Foreign decree" means any decree or order in equity of a court located in a reciprocal state, including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state; and

(2) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by the courts located in other states or territories of the United States against any insurer incorporated or authorized to do business in the state or territory.

(b) The Insurance Commissioner shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of the states.

(c)(1) A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit court of this state.

(2) The clerk, upon verifying with the commissioner that the decree or order qualifies as a foreign decree shall treat the foreign decree in the same manner as a decree of a circuit court of this state.

(3) A foreign decree so filed has the same effect and shall be deemed as a decree of a circuit court of this state. The decree is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(d)(1) At the time of the filing of the foreign decree, the commissioner shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.



(2) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner of this state and shall make a note of the mailing in the docket. In addition, the commissioner may mail a notice of the filing of the foreign decree to the defendant and file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the commissioner has been filed.

(3) No execution or other process for enforcement of a foreign decree filed pursuant to this section shall issue until thirty (30) days after the date the decree is filed.

(e)(1) If the defendant shows the circuit court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(2) If the defendant shows the circuit court any ground upon which enforcement of a decree of any circuit court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(f) Any person filing a foreign judgment or decree shall pay to the clerk of the court the fee prescribed in § 21-6-402. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for judgment or decrees of the circuit court of this state.

**History.** Acts 1959, No. 148, § 28;  
1979, No. 942, § 1; A.S.A. 1947, § 66-  
2113; Acts 2001, No. 1604, § 8.

### **23-61-112. Annual report.**

As early in the calendar year as reasonably possible, the Insurance Commissioner annually shall prepare and deliver a report to the Governor showing, with respect to the preceding calendar year:

(1) Names of the authorized insurers transacting insurance in this state, with such summary of their financial statements as the commissioner deems proper;

(2) Names of insurers whose businesses were closed during the year, the cause thereof, and the amount of assets and liabilities as ascertainable;

(3) Names of insurers against which delinquency or similar proceedings were instituted and a concise statement of the facts with respect to each proceeding;

(4) The receipts and expenses of the State Insurance Department for the year;

(5) Recommendations of the commissioner as to amendments or supplementation of laws affecting insurance and as to matters affecting the department; and

(6) Such other pertinent information and matters as the commissioner deems proper.

**History.** Acts 1959, No. 148, § 29;  
A.S.A. 1947, § 66-2114.

### **23-61-113. Disclosure of nonpublic personal information.**

(a) No person shall disclose any nonpublic personal information contrary to the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

(b) The Insurance Commissioner shall adopt rules and regulations governing the treatment of consumer financial and protected health information by the Arkansas Comprehensive Health Insurance Pool and by all licensed insurers, health maintenance organizations, or other insuring health entities regulated by the commissioner, producers, and other persons licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered by the commissioner.

(c)(1) The commissioner shall waive any provision of this section that creates any conflict with similar federal laws or regulations, or which, due to the enactment of any such similar federal laws or regulations, creates an undue burden or increased financial or operational demands upon any person or entity referenced in subsection (b) of this section in order to comply with this section, the regulations to be promulgated by the commissioner, and similar federal laws and regulations.

(2) Any person or entity referenced in subsection (b) of this section may request a hearing before the commissioner to seek the waiver referenced in subdivision (c)(1) of this section.

(3)(A) Under § 23-61-307, any person or entity referenced in subsection (b) of this section is entitled to appeal the commissioner's decision to deny a waiver.

(B) In any appeal pursuant to this section, the commissioner shall be named as defendant.

(C) In any such action, the commissioner may but shall not be obligated to defend the action, in his or her discretion.

**History.** Acts 2001, No. 1619, § 1; Act referred to in this section is codified 2005, No. 506, § 9.

**U.S. Code.** The Gramm-Leach-Bliley

primarily at 12 U.S.C.S. § 1811 et seq.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

**23-61-114. Annual report regarding malpractice rates.**

(a) The Insurance Commissioner shall conduct an annual study of malpractice insurance rates in Arkansas and report the findings to the Legislative Council and the chairs of both the House Committee on Insurance and Commerce and the Senate Committee on Insurance and Commerce.

(b) The study shall include:

(1) Any findings regarding any changes in medical malpractice rates;  
(2) Any other finding that is relevant to malpractice insurance rates;  
and

(3) Any recommendations in respect to any law relating to medical malpractice insurance.

(c) The report shall be submitted no later than August 1 subsequent to the year studied.

**History.** Acts 2003, No. 1007, § 1. interim committees, members, jurisdiction,

**Cross References.** Establishment of tion, § 10-3-203.

**23-61-115. Policyholder's Bill of Rights.**

(a) The principles expressed in subsection (b) of this section shall serve as standards to be followed by the Insurance Commissioner in:

- (1) Exercising the commissioner's powers and duties;
- (2) Exercising administrative discretion;
- (3) Dispensing administrative interpretations of the law; and
- (4) Adopting rules and regulations.

(b) Policyholders shall have the right to:

(1) Competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies;

(2) Insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy;

(3) An insurer that is financially stable;

(4) Be serviced by a competent, honest insurance producer;

(5) A readable policy;

(6) An insurer that provides an economic delivery of coverage and that tries to prevent losses; and

(7) Balanced and positive regulation by the State Insurance Department.

(c) This section shall not be construed as creating, extinguishing, repealing, or limiting any civil cause of action.

**History.** Acts 2005, No. 1697, § 2.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given

period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing,



maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by

providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

## SUBCHAPTER 2 — EXAMINATION OF INSURERS, ETC.

### SECTION.

23-61-201. Examination of insurers required.

23-61-202. Examination of managers and promoters required.

23-61-203. Examiners.

23-61-204. Examination — Records and appraisals.

### SECTION.

23-61-205. Examination reports.

23-61-206. Examination expense.

23-61-207. Confidentiality of ancillary information.

23-61-208. Immunity from liability.

**Effective Dates.** Acts 1977, No. 789, § 10: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 723, § 33: Mar. 25, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus

Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral pre-

need laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor

may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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### **23-61-201. Examination of insurers required.**

(a)(1) The Insurance Commissioner shall examine the affairs, transactions, accounts, records, market conduct activity, and assets of each authorized insurer as often as in the commissioner's sole discretion he or she deems advisable.

(2) The commissioner shall so examine each authorized insurer not less frequently than every five (5) years.

(3) Examination of an alien insurer shall be limited to its insurance transactions and affairs in the United States.

(4) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the most current edition of the applicable examiners handbook and other standards adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion to conduct an examination under subdivision (a)(1) of this section.

(b) The commissioner may, in like manner, examine each insurer applying for an initial certificate of authority to transact insurance in this state.

(c) In lieu of making his or her own examination of any foreign or alien insurer authorized in this state, the commissioner may, in his or



her discretion, accept a full report of the last recent examination of a foreign or alien insurer as prepared by the insurance department for the company's state of domicile or port-of-entry state. After January 1, 1994, such reports may only be accepted by the commissioner if:

(1) The insurance department preparing the report was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

(2) The examination was performed with the participation of one (1) or more examiners employed by such an accredited state insurance department, who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their accredited insurance department.

(d) As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officials of other states in which the insurer transacts business.

**History.** Acts 1959, No. 148, § 30; January 1, 1992.”  
A.S.A. 1947, § 66-2115; Acts 1991, No. 723, § 2; 1995, No. 1272, § 3; 1997, No. 1000, § 2; 2007, No. 496, § 1.

**Publisher's Notes.** Acts 1991, No. 723, § 9 provided: “Compliance with Sections 1 through 8 of this Act shall be required for all examinations commenced on and after

**Amendments.** The 2007 amendment inserted “market conduct activity” and made a minor punctuation change in (a)(1); and in (a)(4), inserted “applicable” preceding “Examiner's” and inserted “and other standards” following “Handbook.”

### CASE NOTES

**Cited:** Arkansas Ins. Comm'r v. Christian Found. Life Ins. Co., 248 Ark. 1184, 455 S.W.2d 878 (1970).

### 23-61-202. Examination of managers and promoters required.

For the purposes of completing an examination of any company under this subchapter, the Insurance Commissioner may, as often as he or she deems advisable, examine or investigate any person, or the business of any person, insofar as such an examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

**History.** Acts 1959, No. 148, § 31; A.S.A. 1947, § 66-2116; Acts 1991, No. 723, § 3.

**Publisher's Notes.** Acts 1991, No. 723, § 9 provided: “Compliance with Sections 1 through 8 of this Act shall be required for all examinations commenced on and after January 1, 1992.”

### 23-61-203. Examiners.

(a) Upon determining that an examination should be conducted, the Insurance Commissioner shall issue an examination certificate of authority appointing one (1) or more examiners to perform the exami-



nation and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the most current edition of the applicable examiners handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) When making an examination under this subchapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

(c)(1) The commissioner may also accept as a part of the State Insurance Department's examination of any insurer or person:

(A) A report by an independent actuary deemed competent by the commissioner; or

(B) A report of an audit made by an independent certified public accountant.

(2) Neither those persons so designated nor any members of their immediate families shall be officers of, connected with, or financially interested in any insurer other than as policyholders, nor shall they be financially interested in any other corporation or person affected by the examination, investigation, or hearing.

**History.** Acts 1959, No. 148, § 32; 1979, No. 942, § 20; A.S.A. 1947, § 66-2117; Acts 1991, No. 723, § 4; 1995, No. 1272, § 4; 2007, No. 496, § 2.

**Publisher's Notes.** Acts 1991, No. 723, § 9 provided: "Compliance with Sections 1

through 8 of this Act shall be required for all examinations commenced on and after January 1, 1992."

**Amendments.** The 2007 amendment inserted "applicable" preceding "Examiners" in (a).

## 23-61-204. Examination — Records and appraisals.

(a)(1) Every company or person from whom information is sought, its officers, directors, and agents, must provide to the examiners appointed under § 23-61-203 timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person must facilitate such an examination and aid in such an examination so far as it is in their power to do so.

(2) The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, or refusal of, or nonrenewal of, any license or authority held by the company to engage in an insurance or other business subject to the Insurance Commissioner's jurisdiction. Any such proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to § 23-63-213.

(b) If the commissioner finds the accounts to be inadequate or inadequately kept or posted, he or she may employ experts to rewrite, post, or balance them at the expense of the person being examined if the person has failed to complete or correct the accounting after the commissioner has given the person notice and a reasonable opportunity to do so.

(c)(1) If the commissioner deems it necessary to value any property involved in an examination, he or she may make written request of the person being examined to appoint one (1) or more competent appraisers, approved by the commissioner, for the purpose of appraising the property.

(2) If no appointment is made within ten (10) days after this request was delivered to the person, then the commissioner may appoint the appraiser or appraisers.

(3) Any such appraisal shall be promptly made, and a copy of the report shall be furnished to the commissioner.

(4) The reasonable expense of the appraisal shall be borne by the person being examined.

(d) Nothing contained in this subchapter shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(e) Nothing contained in this subchapter shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate.

**History.** Acts 1959, No. 148, § 33; § 9 provided: "Compliance with Sections 1 through 8 of this Act shall be required for all examinations commenced on and after A.S.A. 1947, § 66-2118; Acts 1991, No. 723, § 5.

**Publisher's Notes.** Acts 1991, No. 723, January 1, 1992."

### **23-61-205. Examination reports.**

(a)(1) The Insurance Commissioner or his or her examiner shall make a full and true written report of each examination, which shall comprise only facts appearing upon the books, records, or other documents of the insurer, its agents, or other persons examined, or as ascertained from the sworn testimony of its officers or agents or other persons examined concerning its affairs, and shall include such conclusions and recommendations as may reasonably be warranted from the facts.

(2) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the State Insurance



Department a verified written report of the examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty (30) days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiners' work papers, and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such a violation;

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling pursuant to subdivision (a)(2) of this section; or

(C) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(b)(1) All orders entered pursuant to subdivision (a)(3)(A) of this section shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed, pursuant to § 23-61-307, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within twenty (20) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) Any hearing conducted under subdivision (a)(3)(C) of this section by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within thirty (30) days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subdivision (a)(3)(A) of this section.

(3) The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner may issue subpoenas for the attendance of any witnesses



or the production of any documents deemed relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced shall be included in the record, and testimony taken by the commissioner or his or her representative shall be under oath and preserved for the record at the cost of the company. Nothing contained herein shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(c) Upon the adoption of the examination report under subdivision (a)(3)(A) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of thirty (30) days from the date the company received by United States mail or by electronic mail the order issued by the commissioner to adopt the examination report, except to the extent provided in subdivision (a)(2) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(d) Nothing contained in this subchapter shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this subchapter.

**History.** Acts 1959, No. 148, § 34; A.S.A. 1947, § 66-2119; Acts 1991, No. 723, § 6; 2005, No. 506, §§ 7, 8.

§ 9 provided: "Compliance with Sections 1 through 8 of this Act shall be required for all examinations commenced on and after January 1, 1992."

**Publisher's Notes.** Acts 1991, No. 723,

## RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

### 23-61-206. Examination expense.

(a) Each person so examined shall pay to the State Insurance Department the actual travel expenses, reasonable living expense allowance, and compensation for examiners and other persons assisting in the examination on a basis not to exceed the total of the Geographical Expense Reimbursement Plan set forth in the most current edition of the applicable examiners handbook adopted by the National Association of Insurance Commissioners, upon presentation of a detailed account of the charges and expenses.

(b)(1) Payments for travel expenses and living expense allowance received by the department for each examination shall be deposited as cash funds.

(2) Reimbursement shall be made from these funds to examiners and others assisting in the examination.

(3) Per diem charges of examiners and others assisting in the examination shall be computed beginning at the time of reporting for duty at the office of the company to be examined and terminating upon completion of the examination or the examiner's active participation therein and to include actual days for travel as certified by the Insurance Commissioner. If air travel is used, only one (1) day's travel time will be authorized. If an automobile is used, travel time allowed shall be computed at the rate of not less than four hundred (400) miles per day as determined by the Rand McNally Road Map, with the actual mileage traveled compensated at the most current rate per mile approved for state employees.

(4) Examiners and others assisting in the examination shall not be reimbursed for travel time or travel expenses not actually incurred in connection with an assignment, nor shall they be reimbursed for dual living expenses while on branch office assignments.

(5) Examiners and others assisting in the examination, when participating in or conducting an examination of a foreign company, shall be authorized to return to their state of domicile every other weekend. Their expenses will be paid based upon the lesser of airfare or mileage. The reimbursement shall be made in lieu of the per diem allowance. The travel shall be accomplished with a minimum amount of work time lost.

(c) Payments for employee compensation received by the department shall be deposited by the commissioner into the State Treasury to be credited to the State Insurance Department Trust Fund used for the maintenance, operation, and support of the department.

(d) No person shall pay, and no examiner shall accept, any additional emolument on account of any examination.

**History.** Acts 1959, No. 148, § 35; 1967, No. 433, § 1; 1977, No. 789, § 1; 1983, No. 454, § 1; A.S.A. 1947, § 66-2120; Acts 1991, No. 723, § 7; 1999, No. 881, § 5; 2007, No. 496, § 3.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 652, § 12, § 23-61-711 also provided: "In this regard the provisions of Section 3 of this Act are in fact deemed to supersede the provisions of § 23-61-206 in pertinent part but only as to examiners' salaries, wages and compensation (excluding expense reimbursement

due and liable for food, lodging and travel expenses)."

**Publisher's Notes.** Acts 1991, No. 723, § 9 provided: "Compliance with Sections 1 through 8 of this Act shall be required for all examinations commenced on and after January 1, 1992."

**Amendments.** The 2007 amendment inserted "most current edition of the applicable" preceding "Examiners" in (a).

**Cross References.** Administrative and financial regulation fees, § 23-61-703.



**23-61-207. Confidentiality of ancillary information.**

All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the Insurance Commissioner or any other person in the course of an examination made under this subchapter must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in § 23-61-205. In addition, all workpapers, financial statement analyses, ratio calculations, and any other materials produced by State Insurance Department financial examiners or analysts, or documents submitted or disclosed to the department by an insurer in response to a request from the commissioner or a department financial examiner or analyst during the course of reviewing or investigating the financial solvency, condition, or affairs of an insurer, shall be confidential and not subject to subpoena, except to the extent as provided in § 23-61-205. Access may also be granted to the National Association of Insurance Commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

**History.** Acts 1991, No. 723, § 8; 1999, No. 348, § 1; 2009, No. 726, § 6.

**Publisher's Notes.** Acts 1991, No. 723, § 9 provided: "Compliance with Sections 1 through 8 of this Act shall be required for

all examinations commenced on and after January 1, 1992."

**Amendments.** The 2009 amendment inserted "the commissioner or" following "in response to a request from."

**23-61-208. Immunity from liability.**

(a) No cause of action shall arise nor shall any liability be imposed against the Insurance Commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this subchapter.

(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this subchapter, if such an act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a) of this section.

(d) A person identified in subsection (a) of this section shall be entitled to an award of attorney's fees and costs, if that person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of his or her activities in carrying out the provisions of this subchapter, and the party bringing the action was not



substantially justified in doing so. For purposes of this section, a proceeding is “substantially justified” if it had a reasonable basis in law or fact at the time it was initiated.

**History.** Acts 1991, No. 723, § 8.

**Publisher’s Notes.** Acts 1991, No. 723, § 9 provided: “Compliance with Sections 1

through 8 of this Act shall be required for all examinations commenced on and after January 1, 1992.”

### SUBCHAPTER 3 — PROCEEDINGS

#### SECTION.

23-61-301. Examination, investigation, or hearing — Witnesses and evidence.  
23-61-302. Examination, investigation, or hearing — Testimony compelled — Immunity from prosecution.

#### SECTION.

23-61-303. Hearing — Generally.  
23-61-304. Hearing — Notice.  
23-61-305. Hearing — Procedures.  
23-61-306. Hearing — Order.  
23-61-307. Hearing — Appeal.

**Effective Dates.** Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers’ compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and

immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

#### 23-61-301. Examination, investigation, or hearing — Witnesses and evidence.

(a) With respect to the subject of any examination, investigation, or hearing being conducted by the Insurance Commissioner, the commissioner may subpoena witnesses and administer oaths or affirmations

and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents.

(b)(1) Witness fees and mileage shall not be allowed as to any licensee of the commissioner.

(2) Witness fees and mileage of persons or entities not licensees of the commissioner, if claimed, shall be allowed the same as for testimony in a circuit court. Provided, however, that such a claim must be made at the time, date, and place of the hearing to which the person or entity has been summoned, and the amount thereof shall be processed in the same manner as are State Insurance Department employees' requests for expense reimbursement from the State of Arkansas.

(3) Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined or investigated if, in the proceedings in which the witness is called, the person is found to have been in violation of the law, or paid by the person, if other than the commissioner, at whose request the hearing is held.

(c)(1) Subpoenas of witnesses shall be served in the same manner as if issued by a circuit court and may be served by certified mail.

(2) If any individual fails to obey a subpoena issued and served pursuant to this section with respect to any matter concerning which he or she may be lawfully interrogated, upon application of the commissioner, the circuit court of the county in which is pending the proceeding at which the individual was required to appear may issue an order requiring the individual to comply with the subpoena and to testify.

(3) Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) If any officer, director, or manager of an insurer has refused, in connection with examination of the insurer by the commissioner, to be examined under oath concerning its affairs, then the commissioner is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then presently be to the full extent permitted by the laws of the state or territory, this special authorization considered.

(e) Any person willfully testifying falsely under oath in this state as to any matter material to any examination, investigation, or hearing shall, upon conviction, be guilty of perjury and punished accordingly.

**History.** Acts 1959, No. 148, § 36;  
A.S.A. 1947, § 66-2121; Acts 1993, No.  
901, § 48.

### **23-61-302. Examination, investigation, or hearing — Testimony compelled — Immunity from prosecution.**

(a)(1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, correspondence, or other

documents at or in connection with any examination, hearing, or investigation being conducted by the Insurance Commissioner or his or her examiner on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject him or her to a penalty or forfeiture and shall, notwithstanding, be directed to give the testimony or produce the evidence, the person must nonetheless comply with the direction, but he or she shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence pursuant thereto.

(2) No testimony so given or evidence produced shall be received against him or her upon any criminal action, investigation, or proceeding, except that no individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her while testifying and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning the perjury; nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the Arkansas Insurance Code.

(b)(1) Any such individual may execute, acknowledge, and file in the State Insurance Department a statement expressly waiving immunity or privilege in respect to any transaction, matter, or thing specified in the statement, and, thereupon, the testimony of the person or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise.

(2) If so received or produced, the individual shall not be entitled to any immunity or privilege on account of any testimony he or she may so give or evidence so produced.

**History.** Acts 1959, No. 148, § 37; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-2122. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### **23-61-303. Hearing — Generally.**

(a) The Insurance Commissioner may hold hearings for any purpose within the scope of the insurance laws of this state.

(b)(1) The commissioner shall hold a hearing if required by any provision or upon written demand for a hearing by a person aggrieved by any act, threatened act, or failure of the commissioner to act, or by any report, rule, regulation, or order of the commissioner, other than an order for the holding of a hearing, or an order on hearing or pursuant thereto.

(2) Any demand shall specify the grounds to be relied upon as a basis for the relief to be demanded at the hearing, and unless postponed by



mutual consent, the hearing shall be held within thirty (30) days after receipt by the commissioner of the demand.

(3) If the commissioner has a conflict or is otherwise unable to serve, the commissioner may appoint and compensate a person, including without limitation an attorney or retired judge, from outside the State Insurance Department to act as a hearing officer.

(c) Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of the commissioner's previous action.

**History.** Acts 1959, No. 148, § 38; 1979, No. 942, § 2; A.S.A. 1947, § 66-2123; Acts 2011, No. 760, § 1.

**Amendments.** The 2011 amendment

substituted "insurance laws of this state" for "Arkansas Insurance Code deemed by him or her to be necessary" in (a); and added (b)(3).

### CASE NOTES

#### **Exhaustion of Remedies.**

While this section does not require an appellant to seek a hearing before the Insurance Department, if the appellant wishes to seek a declaratory judgment, it must first give the agency the opportunity

to address the issue involved, and failure to seek a hearing before the department is clearly a failure to exhaust administrative remedies. *Dynamic Enters. Inc. v. Taylor*, 38 Ark. App. 184, 832 S.W.2d 278 (1992).

#### **23-61-304. Hearing — Notice.**

(a) Not less than ten (10) days in advance, the Insurance Commissioner shall give notice of the time and place of the hearing, stating the matters to be considered at the hearing.

(b) If the persons to be given notice are not specified in the provisions pursuant to which the hearing is held, the commissioner shall give notice to all persons to be directly and immediately affected by the hearing.

**History.** Acts 1959, No. 148, § 39; 1979, No. 942, § 3; A.S.A. 1947, § 66-2124.

### RESEARCH REFERENCES

**Ark. L. Rev.** Rules of Evidence in Administrative Proceedings, 15 Ark. L. Rev. 138.

#### **23-61-305. Hearing — Procedures.**

(a) Hearings may be closed to the public at the Insurance Commissioner's discretion, except that a hearing shall be open to the public if so requested in writing by any party to the hearing.

(b) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his or her

interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his or her behalf.

(c) The commissioner shall permit to become a party to the hearing by intervention, if timely, only those persons who were not original parties to the hearing and whose pecuniary interests are to be directly and immediately affected by the commissioner's order made upon the hearing.

(d) Formal rules of pleading or evidence need not be observed at any hearing.

(e)(1) Upon written request timely made by a party to the hearing and at that person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter.

(2) If transcribed, a copy of the stenographic record shall be furnished to the commissioner. Notwithstanding the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the transcribed stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing.

(3) If so transcribed, a copy of the stenographic record shall be furnished to any other party to the hearing at the request and expense of the other party.

(4) If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings.

(f) Upon written request of a party to a hearing filed with the commissioner within thirty (30) days after any order made pursuant to a hearing has been mailed or delivered to the persons entitled to receive the order, the commissioner, in his or her discretion, may grant a rehearing or reargument of the matters involved in the hearing, and notice of the rehearing or reargument shall be given as provided in § 23-61-304.

**History.** Acts 1959, No. 148, § 40; 1979, No. 942, § 4; A.S.A. 1947, § 66-2125; Acts 1987, No. 456, § 2.

### **23-61-306. Hearing — Order.**

(a) In the conduct of any hearing under the Arkansas Insurance Code and making his or her order thereon, the Insurance Commissioner shall act in a quasi-judicial capacity.

(b) Within thirty (30) days after termination of the hearing or of any rehearing thereof or reargument thereon, the commissioner shall make his or her order on hearing, covering matters involved in that hearing and in any rehearing or reargument and shall give a copy of the order to the same persons given notice of the hearing and to all parties to the hearing.

(c) The order shall contain a concise statement of the facts as found by the commissioner and of his or her conclusions from those facts and the matters required by § 23-61-109.

(d) The order may affirm, modify, or nullify action theretofore taken and may constitute the taking of new action within the scope of the notice of hearing.

**History.** Acts 1959, No. 148, § 41; 1979, No. 942, § 5; A.S.A. 1947, § 66-2126.

Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

### CASE NOTES

#### **Issuance.**

Fact that life insurer instituted appeal for failure of Insurance Commissioner to enter an order within statutory period after hearing on insurer's financial im-

pairment did not preclude commissioner from entering a final order or render that order void. *First Heritage Life Assurance Co. v. State ex rel. Horne*, 250 Ark. 746, 467 S.W.2d 383 (1971).

### **23-61-307. Hearing — Appeal.**

(a) An appeal from the Insurance Commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused or failed to grant or hold a hearing after demand therefor under § 23-61-303 or as to a matter as to which the commissioner has refused or failed to make his or her order on hearing as required by § 23-61-306.

(b) Any person who was a party to the hearing, or whose pecuniary interests are directly and immediately affected by the refusal or failure to grant a hearing, and who is aggrieved by the order, refusal, or failure may appeal from the order on hearing or as to any such matter within thirty (30) days after:

(1) The order on hearing has been mailed or delivered to the persons entitled to receive it;

(2) The commissioner's order denying rehearing or reargument has been so mailed or delivered;

(3) The commissioner has refused or failed to make his or her order on hearing as required under § 23-61-306; or

(4) The commissioner has refused or failed to grant or hold a hearing as required under § 23-61-303.

(c) The appeal shall be granted as a matter of right and shall be taken to the Pulaski County Circuit Court by filing written notice of appeal in the court and by filing a copy of the notice with the commissioner, except that, in appeals from the refusal, suspension, or revocation of the license of an agent, broker, solicitor, or surplus line broker, the person taking the appeal may at his or her option take the appeal to the circuit court of the county in which the person resides instead of to the Pulaski County Circuit Court.

(d) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether the filing shall operate as



a stay of the order or action appealed from and shall have the right at any time thereafter to issue such other temporary or preliminary orders as to it may seem proper until a final decree is rendered.

(e) Within thirty (30) days after filing of the copy of notice of appeal in his or her office, or within such further time as the court may allow, the commissioner shall make, certify, and deposit in the office of the clerk of the court in which the appeal is pending a full and complete transcript of all proceedings had before the commissioner and all evidence before him or her in the matter, including all his or her files therein.

(f) Upon receipt of the transcript, evidence, and files, the court, as soon as reasonably possible thereafter, shall review the action of the commissioner appealed from.

(g)(1) Any appeal shall be upon the basis of the record so presented.

(2) In any review the findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

(3) If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceedings before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper.

(4) The commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence taken pursuant to subdivision (g)(3) of this section. The commissioner shall file the modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his or her recommendation, if any, for the modification or setting aside of his or her original order with the return of the additional evidence.

(h) After hearing the appeal the court may affirm, modify, or reverse the order or action of the commissioner in whole or in part, or may remand the action to the commissioner for further proceedings in accordance with the court's direction.

(i) Costs shall be awarded as in civil actions.

(j)(1) Appeal may be taken to the Supreme Court or the Court of Appeals from the judgment of the circuit court as in other civil cases.

(2) The circuit court judgment appealed from shall not be subject to supersedeas, and a stay of the effectiveness of any judgment may be made only by order of the Supreme Court or the Court of Appeals upon the giving of such security as the court deems proper.

**History.** Acts 1959, No. 148, § 42; 2127; Acts 1987, No. 456, § 3; 1995, No. 1979, No. 942, § 6; A.S.A. 1947, § 66- 1272, § 5.

CASE NOTES

ANALYSIS

Final Orders.  
Scope of Review.

**Final Orders.**

Fact that life insurer instituted appeal for failure of Insurance Commissioner to enter an order within statutory period after hearing on insurer's financial impairment did not preclude commissioner from entering a final order or render that order void. *First Heritage Life Assurance Co. v. State ex rel. Horne*, 250 Ark. 746, 467 S.W.2d 383 (1971).

**Scope of Review.**

The circuit court had power to modify certificate required by the commissioner to be executed by the principal officers of each insurer in connection with the commissioner's examination of such insurers, without impairing the commissioner's power to make regulations or prescribe certificates within the limits permitted by law. *Arkansas Ins. Comm'r v. Christian Found. Life Ins. Co.*, 248 Ark. 1184, 455 S.W.2d 878 (1970).

**Cited:** *Douglas v. Dynamic Enters., Inc.*, 315 Ark. 575, 869 S.W.2d 14 (1994).

SUBCHAPTER 4 — FEES

SECTION.

23-61-401. License and miscellaneous fees.

SECTION.

23-61-402. Disposition.

**Cross References.** Retaliation for foreign fees, § 23-63-102.

**Effective Dates.** Acts 1959, No. 304, § 3: 12:01 a.m., Jan. 1, 1960.

Acts 1965, No. 95, § 2: Feb. 22, 1965. Emergency clause provided: "It is hereby declared that the fees now being collected are inadequate and that states surrounding Arkansas are charging much higher fees. It is, therefore, declared that an emergency exists and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force immediately upon and after its passage and approval."

Acts 1975, No. 729, § 9: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 789, § 10: Mar. 28, 1977. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concern-

ing the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from after its passage and approval.”

Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral pre-need laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the

federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

RESEARCH REFERENCES

C.J.S. 44 C.J.S., Ins., §§ 48, 80.

23-61-401. License and miscellaneous fees.

The Insurance Commissioner shall collect annually or biennially as prescribed by rule of the commissioner and pay to the Treasurer of State the following fees, licenses, and miscellaneous charges:

- (1) Admission fees:
  - (A) Filing and reviewing all documents necessary for issuance of certificate of incorporation for domestic companies ..... \$100.00



- (B) Issuance of an original certificate of incorporation for domestic companies ..... 50.00
- (C) Reviewing all documents necessary for issuance of original certificate of authority ..... 500.00
- (D) Issuance of original certificate of authority for all companies ..... 150.00
- (E) Issuance of original license for rate service organizations and employer service assurance organizations ..... 500.00
- (F) Filing and reviewing all documents of a nonadmitted company seeking to be placed on the "approved" list for the writing of surplus lines insurance ..... 500.00
- (2) Annual renewal fees:
  - (A) Filing an annual statement for all companies ..... 50.00
  - (B) Renewal of a certificate of authority for all companies ..... 100.00
  - (C) Rate service organizations and employer service assurance organizations, annual continuation of license .... 100.00
- (3) Other miscellaneous fees:
  - (A) Amendment to articles of incorporation ..... 25.00
  - (B) Reinstatement of certificate of authority ..... 50.00
  - (C) Amending an existing certificate of authority ..... 100.00
- (4) Agent's license for resident agents:
  - (A) Property, casualty, surety agents:
    - Original issuance of each license ..... 15.00
    - Annual continuation of appointment, each insurer ..... 10.00
    - Appointment of agent by insurer, each insurer ..... 10.00
  - (B) Life and accident and health insurance agents:
    - Appointment of agent by insurer, each insurer ..... 10.00
    - Annual continuation of appointment, each insurer ..... 10.00
  - (C) Each vending machine licensed under § 23-64-221, each year ..... 10.00
- (5) Broker's license for resident brokers:
  - (A) Original license ..... 30.00
  - (B) Annual continuation of license ..... 30.00
- (6) Nonresident broker (corporate) license:
  - (A) Original license ..... 30.00
  - (B) Annual continuation of license ..... 30.00
- (7) Nonresident broker license:
  - (A) Original license ..... 30.00
  - (B) Annual continuation of license ..... 30.00
- (8) Nonresident agent license fees: .... As established by rule of the commissioner
- (9) Temporary license:
  - (A) As resident agent ..... 10.00
  - (B) As resident broker ..... 25.00
- (10) Examination for agent or broker license:
  - (A) Filing application for examination for agent or broker .. 10.00
  - (B) Filing application for reexamination for agent or broker ..... 5.00

- (11) Surplus line broker license:
  - (A) Original license, individual ..... 1,000.00
  - (B) Original license, firms and corporations plus one (1) qualifying individual ..... 1,000.00
  - (C) Each additional individual..... 100.00
  - (D) Annual continuation of license ..... 25.00
- (12) Adjuster's license, each year .....25.00
- (13) Consultants:
  - (A) Original license ..... 25.00
  - (B) Annual renewal..... 25.00
- (14) Miscellaneous services:
  - (A) For copies of documents and records on file in State Insurance Department, per page ..... 0.25
  - (B) For each certificate of the commissioner other than certificates of authority ..... 5.00

**History.** Acts 1959, No. 148, § 68; 1965, No. 95, § 1; 1975, No. 729, § 3; 1977, No. 789, § 3; 1979, No. 942, §§ 9, 10; 1981, No. 809, § 1; 1983, No. 522, § 3; 1985, No. 804, §§ 22-25; A.S.A. 1947, § 66-2301; Acts 1987, No. 456, § 8; 1987, No. 927, § 1; 1999, No. 118, § 1; 1999, No. 384, §§ 1, 2; 2001, No. 1603, § 1; 2003, No. 1750, §§ 3[2], 4[3]; 2009, No. 726, §§ 7, 8.

**Publisher's Notes.** Acts 1983, No. 522, § 51, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

Acts 2003, No. 1750 did not contain a Section 2.

**Amendments.** The 2009 amendment rewrote the introductory language of the section; and in (8), substituted "Nonresident agent license fees: As established by rule of the commissioner" for "Nonresident agent license" in the introductory language and deleted (8)(A) through (8)(F), which listed the former fees.

## 23-61-402. Disposition.

(a) The Insurance Commissioner shall deposit all fees collected under § 23-61-401 into the State Treasury as special revenues. Unless specifically authorized by law, order, or consent decree for collection and deposit into other accounts or other trust funds as general or special revenues, including, but not limited to, the State Insurance Department Trust Fund under the State Insurance Department Trust Fund Act, § 23-61-701 et seq., the Insurance Continuing Education Trust Fund under § 23-64-307, and the State Insurance Department Criminal Investigation Division Trust Fund under § 23-100-103, all fees, penalties and fines, gifts, grants and endowments and awards, restitution payments, interest and investment income, and dividends paid or payable to or collected by the commissioner, or both, and not otherwise appropriated shall be deposited into the State Insurance Department Trust Fund as special revenues for the maintenance, operation, and support of and improvements to the State Insurance Department.

(b) On the last business day of each month, the State Treasury shall credit the net amount of the fees collected under § 23-61-401 to the Constitutional Officers Fund and the State Central Services Fund to be used for the maintenance, operation, and improvement of the respective agencies and services receiving support from the Constitutional Officers Fund and the State Central Services Fund as authorized by law.

**History.** Acts 1959, No. 148, § 68; 1959, No. 304, § 1; 1963, No. 238, § 1; 1983, No. 522, § 4; A.S.A. 1947, § 66-2301; Acts 1995, No. 1296, § 81; 1999, No. 881, § 6.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-61-401.

## SUBCHAPTER 5 — JURISDICTION OVER HEALTH BENEFIT PROVIDERS

### SECTION.

23-61-501. Purpose.

23-61-502. Exempt health care plans.

23-61-503. Jurisdiction of State Insurance Department — Application of Arkansas Insurance Code.

### SECTION.

23-61-504. Examination required — Exception.

23-61-505 — 23-61-507. [Repealed.]

23-61-508. Rules and regulations.

**Effective Dates.** Acts 1983, No. 728, § 11: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain self-insured health care plans shall be subject to the same provisions of the insurance laws of this State; that this Act is necessary to accomplish the same; and that inequity will exist until such time as this Act becomes effective. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it

shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 516, § 7: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unauthorized insurance products are a danger to Arkansas insurance consumers; that unauthorized persons and entities have collected premiums from Arkansas insurance consumers but have not paid claims; that the sale of unauthorized insurance products has resulted in hundreds of thousands of dollars in unpaid medical bills in Arkansas; that Arkansas insurance consumers should be able to rely on their insurance producers to sell them products authorized to be sold in Arkansas; and that unauthorized products continue to be sold in Arkansas; and that these changes are immediately necessary to enable the State Insurance Department to take immediate action against unauthorized persons and entities and to require insurance producers to ensure that the products they sell are authorized. Therefore, an emergency is declared to exist, and this



act being immediately necessary for the preservation of the public peace, health, and safety, shall become effective on: (1) The date of its approval by the Governor; (2) However, if the bill is neither approved nor vetoed by the Governor, the expiration

of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date that last house overrides the veto.”

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Insurance, 14 U. Ark. Little Rock L.J. 379.

**C.J.S.** 44 C.J.S., Ins., §§ 53, 65.

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### 23-61-501. Purpose.

The purpose of this subchapter is to:

(1) Enable the State of Arkansas to determine jurisdiction over the providers of health care benefits described in § 23-61-503;

(2) Allow examinations by this state unless the provider of health care benefits is able to show it is not subject to the jurisdiction of the State Insurance Department; and

(3) Make the provider of health care benefits subject to the applicable laws of this state unless it can show that it is not subject to the jurisdiction of the department.

**History.** Acts 1983, No. 728, § 1; A.S.A. 1947, § 66-2019; Acts 2003, No. 516, § 1.

### 23-61-502. Exempt health care plans.

The provisions of this subchapter shall not apply to those health care plans which are maintained:

(1) Pursuant to a collective bargaining agreement;

(2) By a tax exempt rural electric cooperative;

(3) By the Arkansas Poultry Federation; or

(4) By any nonprofit vision service plan corporation composed of at least fifty (50) participating optometrists or ophthalmologists licensed by the State of Arkansas to provide vision care services on a prepaid basis when each licensed optometrist or ophthalmologist is subject to the rules and regulations of the professional's respective state board and when each participating licensed optometrist or ophthalmologist agrees to assume responsibility for completion of the provisions of the vision care services contracted for so that no element of risk is incurred by any subscriber group or person.

**History.** Acts 1983, No. 728, § 8; 1985, No. 794, § 1; A.S.A. 1947, § 66-2026.

## CASE NOTES

**Exemption.**

Trust specifically afforded an exemption from the provisions of the Insurance Code pursuant to subdivision (3) was not subject to the imposition of the statutory penalty and attorney's fees provided in

§ 23-79-208(a). *Arkansas Poultry Fed'n Ins. Trust v. Lawrence*, 34 Ark. App. 45, 805 S.W.2d 653 (1991).

**Cited:** *Lunningham v. Arkansas Poultry Fed'n Ins. Trust*, 53 Ark. App. 280, 922 S.W.2d 1 (1996).

### **23-61-503. Jurisdiction of State Insurance Department — Application of Arkansas Insurance Code.**

(a) Notwithstanding any other provision of law and except as provided in this subchapter, any person, entity, or plan that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the State Insurance Department and to all other applicable provisions of the Arkansas Insurance Code unless the person, entity, or plan described in this section shows that it is not subject to the jurisdiction of the department.

(b) This subchapter shall not apply to:

(1) A trust established under §§ 14-54-101 and 25-20-104 to provide benefits such as accident and health benefits, death benefits, dental benefits, and disability income benefits; or

(2) The Comprehensive Health Insurance Pool Act, § 23-79-501 et seq.

**History.** Acts 1983, No. 728, § 2; A.S.A. 1947, § 66-2020; Acts 2003, No. 516, § 2.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-61-504. Examination required — Exception.**

Any person, entity, or other provider described in § 23-61-503 that fails to show it is not subject to the jurisdiction of the State Insurance Department shall submit to an examination or investigation by the Insurance Commissioner to determine its organization, solvency, and compliance with the Arkansas Insurance Code.

**History.** Acts 1983, No. 728, § 4; A.S.A. 1947, § 66-2022; Acts 2003, No. 516, § 3.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-61-505 — 23-61-507. [Repealed.]**

**Publisher's Notes.** These sections, concerning proof of alternate jurisdiction, subjection to Arkansas Insurance Code, and disclosure required, were repealed by

Acts 2003, No. 516, § 4. The sections were derived from:

23-61-505. Acts 1983, No. 728, § 3; A.S.A. 1947, § 66-2021.

23-61-506. Acts 1983, No. 728, § 5; A.S.A. 1947, § 66-2024; Acts 2001, No. A.S.A. 1947, § 66-2023.  
23-61-507. Acts 1983, No. 728, § 6;

### 23-61-508. Rules and regulations.

The Insurance Commissioner is authorized to promulgate rules and regulations which may be necessary for the implementation and enforcement of this subchapter.

**History.** Acts 1983, No. 728, § 7; A.S.A. 1947, § 66-2025.

## SUBCHAPTER 6 — RISK MANAGEMENT ACT

### SECTION.

23-61-601. Title.  
23-61-602. Purpose.  
23-61-603. Definitions.  
23-61-604. Risk Management Division —  
Creation.  
23-61-605. Risk manager — Appointment  
— Authority.

### SECTION.

23-61-606. Procurement of insurance or  
surety bonding.  
23-61-607. Rules and regulations.  
23-61-608. Advice and assistance for cer-  
tain political subdivisions.  
23-61-609. Reports by state agencies.  
23-61-610. Annual report.

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**Effective Dates.** Acts 1981, No. 272, § 15: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Arkansas General Assembly that this Act is necessary to minimize the cost of insurance for state agencies and to place greater emphasis on reduction rather than reimbursement of loss by the use of loss control techniques. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

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### 23-61-601. Title.

This subchapter may be cited as the "Risk Management Act".

**History.** Acts 1981, No. 272, § 3; A.S.A. 1947, § 66-5703.

### 23-61-602. Purpose.

(a) It is the purpose of this subchapter to reduce the cost to the state of insurance coverage, including surety bonds, by establishing the Risk Management Division.



(b) It is also the purpose of this subchapter that the division analyze and make recommendations as to cost-effective loss control and safety programs for the various state agencies.

(c) It is also the purpose of this subchapter to authorize the division to advise and give assistance to municipalities, counties, school districts, and improvement districts as to the procurement of insurance coverage and other risk management techniques.

**History.** Acts 1981, No. 272, § 1; A.S.A. 1947, § 66-5701.

### **23-61-603. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Risk management" means the minimization of loss through the discovery of loss sources, evaluation of the impact of a possible loss on the organization, and the selection of the most effective and efficient technique of dealing with risk of loss;

(2) "Risk manager" means the Administrator of the Risk Management Division; and

(3) "State agencies" means any agencies, boards, bureaus, commissions, councils, departments, institutions, or other establishments of this state.

**History.** Acts 1981, No. 272, § 2; A.S.A. 1947, § 66-5702.

### **23-61-604. Risk Management Division — Creation.**

There is created a Risk Management Division within the State Insurance Department.

**History.** Acts 1981, No. 272, § 4; A.S.A. 1947, § 66-5704.

### **23-61-605. Risk manager — Appointment — Authority.**

(a)(1) The Administrator of the Risk Management Division will be appointed by the Insurance Commissioner.

(2) The risk manager shall be knowledgeable and experienced in risk management techniques.

(b) The risk manager shall have the authority to:

(1) Establish standardized specifications for insurance coverage of all state agencies;

(2) Determine all specifications for insurance coverage of state agencies;

(3) Assist and advise state agencies in the procurement of insurance coverage;

(4) Establish a system for reporting insured or uninsured losses incurred by state agencies and purchases of insurance by state agencies within guidelines established by the risk manager;

(5) Develop and promote programs to control losses and encourage safety; and

(6) Perform any other function of risk management as directed by the commissioner.

**History.** Acts 1981, No. 272, §§ 4, 5;  
A.S.A. 1947, §§ 66-5704, 66-5705.

### **23-61-606. Procurement of insurance or surety bonding.**

(a) The State Procurement Director shall procure insurance or surety bonding in accordance with the Arkansas Procurement Law, § 19-11-201 et seq., unless the risk manager determines that it is in the best interest of the state for the director to procure insurance or surety bonding by negotiation, or for any state agency to procure all or part of its own insurance or surety bonding.

(b) When the Administrator of the Risk Management Division authorizes state agencies to procure insurance or surety bonding, the authorization shall be made in writing and approved by the Insurance Commissioner. The authorization may be made for, but not limited to, purchases not exceeding an amount established by regulations, particular lines of insurance, and purchases by state agencies with a demonstrated expertise in the field of risk management.

(c) Upon approval of the risk manager and the director, a state agency may be authorized to procure insurance or surety bonding under emergency conditions. Emergency conditions exist when life, health, welfare, assets, or functional operations of an agency are or may be threatened or impaired.

(d) The director shall not have jurisdiction over the procurement of surety bonding or insurance coverage for state agencies except as provided by this subchapter.

**History.** Acts 1981, No. 272, §§ 7-10; 1983, No. 522, §§ 41, 42; A.S.A. 1947, §§ 66-5707 — 66-5710.

**Publisher's Notes.** Acts 1983, No. 522, § 51, provided, in part, that the act would

be cumulative of prior laws, and that no prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

### **23-61-607. Rules and regulations.**

(a) The Administrator of the Risk Management Division shall have the authority to promulgate rules and regulations consistent with this subchapter.

(b) All rules and regulations shall be subject to the approval of the Insurance Commissioner and conform with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**History.** Acts 1981, No. 272, § 11;  
A.S.A. 1947, § 66-5711.

### 23-61-608. Advice and assistance for certain political subdivisions.

(a) At the request of any municipality, county, school district, or improvement district, the risk manager may give advice and assistance on the purchase of insurance coverage and other risk management techniques.

(b) However, counties, municipalities, school districts, and improvement districts may be required to reimburse the State Insurance Department for expenses incurred by providing the assistance. Reimbursements shall not include salary and benefit expenses for full-time state employees.

(c) The reimbursements shall be deposited into the State Treasury as nonrevenue receipts refund to expenditures.

(d) This section shall only be used in the event that budgetary constraint dictates this action to prevent undue fiscal hardships on the department.

**History.** Acts 1981, No. 272, § 13; 1983, No. 522, § 43; A.S.A. 1947, § 66-5713.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-61-606.

### 23-61-609. Reports by state agencies.

State agencies shall report to the Administrator of the Risk Management Division information that the risk manager determines to be necessary to analyze and manage the risk of loss of state assets.

**History.** Acts 1981, No. 272, § 12; A.S.A. 1947, § 66-5712.

### 23-61-610. Annual report.

The Administrator of the Risk Management Division shall report annually to the Governor and the Legislative Council on his or her findings and recommendations.

**History.** Acts 1981, No. 272, § 6; A.S.A. 1947, § 66-5706.

## SUBCHAPTER 7 — STATE INSURANCE DEPARTMENT TRUST FUND ACT

#### SECTION.

23-61-701. Title.

23-61-702. State Insurance Department Trust Fund — Creation.

23-61-703. Insurers' administrative and financial regulation fees.

23-61-704. Insurers' payment extensions — Penalties for noncom-

#### SECTION.

pliance — Commissioner's waiver for impaired or insolvent insurers.

23-61-705. Insurers' regulation fees — Deposit into the State Insurance Department Trust Fund as special revenues.



## SECTION.

- 23-61-706. Administrative and regulatory fees — Other licensees.
- 23-61-707. Fees payable by agents on inactive license status.
- 23-61-708. Fees for various other departmental services and products.
- 23-61-709. Insurance Commissioner's authority, powers, and duties.

## SECTION.

- 23-61-710. Trust fund — State Insurance Department vouchers and Auditor of State.
- 23-61-711. Fees additional to all others currently payable — Exception.

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**Cross References.** State Insurance Department Trust Fund, § 19-5-922.

Fraudulent Insurance Acts Prevention, § 23-66-501 et seq.

Insurance Fraud Investigation Division Trust Fund Act, § 23-100-101 et seq.

**Effective Dates.** Acts 1993, No. 652, § 18: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that current revenues supporting the operation and activities of the Arkansas Insurance Department are insufficient for efficient and productive operation of the Insurance Department in view of its myriad duties to protect the insurance-buying consumers of this State and to regulate the Arkansas activities of insurers, insurance agents and similar licensees, and professional bail bond companies. The provisions of this Act are essential to the operations of the Arkansas Insurance Department and delay in the effective date of this Act could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary

in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral pre-need laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guar-

anteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 580, § 29, provided: "Effective date. The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds that implementation of the act is not possible by July 1, 2002."

Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline

in regard to the Arkansas Insurance Department's regulation of agents, brokers, surplus line brokers, and other applicants for individual and corporate licenses; and that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come into compliance by the November 12, 2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 572, § 3: Mar. 6, 2001. Emergency clause provided: "It is found and determined by the General Assembly that confusion exists on the disposition of interest earnings on State Treasury funds in The State Insurance Department Trust Fund and that clarification is required so that funds are not lost by the General Improvement and Budget Stabilization Trust Funds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 726, § 9: January 1, 2010, by its own terms.

## RESEARCH REFERENCES

**Am. Jur.** 43 **Am. Jur. 2d**, Ins., § 36.

**C.J.S.** 44 **C.J.S.**, Ins., § 59.

**23-61-701. Title.**

This subchapter shall be known as the “State Insurance Department Trust Fund Act”.

**History.** Acts 1993, No. 652, § 1.

**23-61-702. State Insurance Department Trust Fund — Creation.**

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the State Insurance Department Trust Fund to be used to:

(1) Defray the expenses of the State Insurance Department in the discharge of its administrative and regulatory powers and duties as prescribed by law;

(2) Defray the administrative expenses and losses incurred by the Arkansas Comprehensive Health Insurance Pool or its successor; and

(3) Fund capital expenditures and training for fire departments certified by the Arkansas Department of Emergency Management.

(b) No money is to be appropriated from this fund for any purpose except:

(1) As provided in subsection (a) of this section;

(2) For the personal services and operating expenses, maintenance and operations, and support of and improvements to the State Insurance Department; or

(3) At the direction of the Insurance Commissioner for the use, benefit, and support of the State Insurance Department.

(c) The fund established pursuant to this section shall be administered, disbursed, and invested under the direction of the commissioner and the Treasurer of State.

(d) All income derived through grants, refunds, and gifts to the fund shall be credited as income to the fund and deposited therein.

(e) Further, all moneys deposited to the fund shall not be subject to any deduction, tax, levy, or any other type of assessment except as may be provided in this subchapter.

**History.** Acts 1993, No. 652, § 2; 2001, No. 572, § 1; 2003, No. 1583, § 4.

**23-61-703. Insurers’ administrative and financial regulation fees.**

(a) Notwithstanding § 26-57-602 and other provisions of Arkansas law, all licensed insurers, including without limitation all licensed stock and mutual insurance companies, health maintenance organizations, fraternal benefit societies, hospital and medical service corporations, stipulated premium insurers, reinsurers, and farmers’ mutual aid associations annually in the manner prescribed by the Insurance Commissioner shall pay to the State Insurance Department Trust Fund



a nonrefundable administrative and financial regulation fee no later than:

- (1) June 1; or
- (2) A date or dates established by rule of the commissioner.
- (b)(1) This fee shall be based upon the insurer's direct premiums and copayments written in the State of Arkansas during the preceding calendar year, as evidenced by the insurer's annual statement filed March 1 annually with the State Insurance Department pursuant to the Arkansas Insurance Code.
- (2) Insurers and reinsurers with no annual direct written Arkansas premiums shall pay the minimum fee of five hundred dollars (\$500).
- (c) Such administrative and financial regulation fees shall be paid in the following amounts based upon the following schedule:

ARKANSAS DIRECT WRITTEN PREMIUMS AND COPAYMENTS OF INSURERS, HMO'S, FMAA'S, AND OTHERS (total for preceding calendar year)	ANNUAL ADMINISTRATIVE AND FINANCIAL REGULATION FEE DUE STATE OF ARKANSAS
\$0	\$ 500
01-499,999	750
500,000-2,499,999	1,000
2,500,000-4,999,999	2,500
5,000,000-7,499,999	5,000
7,500,000-9,999,999	7,500
10,000,000-19,999,999	10,000
20,000,000-29,999,999	12,000
30,000,000-49,999,999	15,000
50,000,000-74,999,999	17,500
75,000,000-99,999,999	20,000
100,000,000 AND UP	25,000

(d) In no event shall the annual financial regulation fee imposed in this section and assessed to support the maintenance and operation of the department exceed twenty-five thousand dollars (\$25,000) for any one (1) insurer or reinsurer in any one (1) year.

**History.** Acts 1993, No. 652, § 3; 1995, No. 1272, § 6; 2009, No. 726, § 9.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 652, § 3, subsection (a) also provided that the nonrefundable administrative and financial regulation fee be paid not later than June 30, 1993 for the 1992-1993 fiscal year, and on or before June 30th for all subsequent years.

As originally enacted by Acts 1993, No. 652, § 12, § 23-61-711 contained a second sentence which read: "The provisions of Section 3 of this Act are in fact deemed to

supersede the provisions of § 23-61-206 in pertinent part but only as to examiners' salaries, wages and compensation (excluding expense reimbursement due and liable for food, lodging and travel expenses)."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2009 amendment rewrote (a).

**Cross References.** Commissioner's examination or investigation expenses, § 23-61-206.

**23-61-704. Insurers' payment extensions — Penalties for non-compliance — Commissioner's waiver for impaired or insolvent insurers.**

(a)(1) The Insurance Commissioner may grant any licensed insurer an extension for reporting and payment of the annual administrative and financial regulation fee for good cause shown upon the written application of the licensed insurer received at the State Insurance Department on or before each annual due date.

(2) Absent the commissioner's approval of such time extensions for good cause, licensed insurers failing timely to report or pay the administrative and financial regulation fee shall be subject to a penalty of one hundred dollars (\$100) a day for each day of delinquency, payable to the State Insurance Department Trust Fund.

(3)(A) The commissioner may pursue any appropriate legal remedies on behalf of the State Insurance Department Trust Fund to collect the administrative and financial regulation fees and penalties due and unpaid from any delinquent insurer.

(B) Further, the commissioner may in his or her discretion order suspension of the delinquent insurer's Arkansas certificate of authority after notice and hearing until payment of all such fees and penalties is remitted to the State Insurance Department Trust Fund.

(4) Absent a grant of his or her waiver for good cause shown, the commissioner may revoke the Arkansas certificate of authority of any delinquent insurer consistently refusing and failing without good cause to remit payment of those fees and penalties to the fund pursuant to this subchapter.

(b)(1) The commissioner may in his or her discretion waive all or any part of the administrative and financial regulation fee due annually from a licensed insurer upon the suspension or revocation of the insurer's Arkansas certificate of authority, or upon issuance of a court order placing the company into conservation, rehabilitation, or liquidation in any state, or upon the commissioner's finding that the insurer is impaired or insolvent, or that its operations are hazardous to the insurance-buying public of this state.

(2) Upon the reinstatement or activation of the insurer's Arkansas certificate of authority in good standing, the commissioner's waiver automatically terminates and the insurer shall be liable for payment of the administrative and financial regulation fee on the next succeeding March 1 without retroactive reimbursement for the amount of the fees which would normally have accrued during the waiver period.

**History.** Acts 1993, No. 652, § 4.

**23-61-705. Insurers' regulation fees — Deposit into the State Insurance Department Trust Fund as special revenues.**

The Insurance Commissioner shall deposit all administrative and financial regulation fees and any penalties assessed under this subchapter directly into the State Insurance Department Trust Fund as special revenues.

**History.** Acts 1993, No. 652, § 5.

**23-61-706. Administrative and regulatory fees — Other licensees.**

(a) In addition to and notwithstanding all other current and future statutory fees, assessments, or penalties paid by licensees or registrants in connection with the issuance and renewal of their Arkansas licenses or registrations as required under the Arkansas Insurance Code or other Arkansas laws, new and additional or increased nonrefundable administrative and regulatory fees are hereby imposed against all licensed resident and nonresident agents, agencies, brokers, surplus line and purchasing group brokers, risk retention agents, third party administrators, and similar licensees or registrants for each and every individual, firm, or corporation licensed or registered by the State Insurance Department pursuant to the provisions of the Arkansas Insurance Code and, in particular, the provisions of § 23-64-101 et seq., § 23-64-201 et seq., the Surplus Lines Insurance Law, § 23-65-301 et seq., § 23-73-101 et seq., § 23-74-101 et seq., § 23-76-101 et seq., the Arkansas Legal Insurance Act, § 23-91-201 et seq., § 23-92-201 et seq., and the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., excluding insurers, health maintenance organizations, hospital and medical service corporations, fraternal benefit societies, and farmers' mutual aid associations, risk retention and purchasing groups, stipulated premium insurers, and similar insurer-type entities.

(b) The fees shall be payable to the State Insurance Department Trust Fund for the support and operation of the State Insurance Department, and in no event shall any one (1) fee required by subsection (a) of this section exceed a maximum of fifty dollars (\$50.00) per license or registration. The fees due per license as required by this section commencing on and after July 1, 1994, and annually thereafter, shall be due in an amount and at such times or upon such schedule as the Insurance Commissioner shall prescribe in a companion rule and regulation to this chapter after notice and a public hearing, so long as the companion rule does not provide for any one (1) fee set pursuant to this section to exceed the maximum amount of fifty dollars (\$50.00) per license.

(c) Commencing immediately on and after March 24, 1993, all new applicants for original or initial licensure or registration pursuant to the provisions of any of the Arkansas Insurance Code subchapters



recited in subsection (a) of this section shall pay the annual administrative and regulatory fee per license or registration to accompany the application for the license or registration upon filing with the department.

(d)(1) Upon the failure of the applicant or licensee or registrant timely to report or pay any of the additional administrative and regulatory fees assessed in this section, the fee payable to the State Insurance Department Trust Fund shall be twice the amount required in this section.

(2) Additionally, without an abuse of discretion, the commissioner in his or her discretion may deny licensure or renewal licensure or registration or renewal registration to a new applicant, licensee, or registrant, or may suspend or revoke current licensees or registrants required by this section to pay the administrative and regulatory fee.

(3) The commissioner may also pursue other civil legal remedies for collection of the fees and penalties due and unpaid from applicants and licensees and registrants pursuant to this section.

(e) Upon collection, the Insurance Commissioner shall deposit all such administrative and regulatory fees and penalties directly into the State Insurance Department Trust Fund as special revenues.

(f) For the licensees enumerated in this section whose licenses are subsequently suspended for violations of Arkansas laws or the commissioner's rules or orders, the administrative and regulatory fees are due and owing upon the normal due date prescribed in the commissioner's companion rule to this subchapter, including those licensees under a license suspension ordered by the commissioner for timely failure to pay this regulatory fee, and license reinstatement shall not proceed, automatically or otherwise, pursuant to the Arkansas Insurance Code unless and until the licensee pays all outstanding and owing regulatory fees imposed by this chapter.

**History.** Acts 1993, No. 652, § 7.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 652, § 7, subsection (b) also provided: "that such fees due for the period commencing immediately upon passage of this Act and ending June 30, 1994 shall be paid to the Trust Fund in the amount of thirty-five dollars (\$35.00) per license or registration for individuals and thirty-five dollars (\$35.00) for corporations and partnerships (agencies) on a schedule as the Commissioner shall direct for this period only." Subsection (c), as originally enacted, contained a second sentence which read: "For the first imposition and payment of the new or increased fees immediately following passage of this Act and on or before July 1, 1994, all current licensees and registrants holding any one or more subsisting licenses or registrations pursuant to any of

the provisions of the Insurance Code subchapters recited in subsection (a) of this section shall pay the administrative and regulatory fee as directed by the Commissioner pursuant to the provisions of this Section, so long as the fee per each license does not exceed fifty dollars (\$50.00)."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

Acts 1993, No. 901, § 1, provided: "The administrative and regulatory fee assessed insurance agents at a maximum of fifty dollars (\$50) under The State Insurance Department Trust Fund Act of 1993 as it is popularly known, with such fee as referenced therein to be addressed in the Insurance Commissioner's companion rule and regulation to that legislation

upon its passage and approval, shall be borne as a regulatory fee by insurance agents, and shall not be considered to be, or borne or paid as an obligation by spon-

soring insurance companies, notwithstanding contrary language, if any, of The State Insurance Department Trust Fund Act of 1993.”

**23-61-707. Fees payable by agents on inactive license status.**

(a) Effective on and after July 1, 1999, the Insurance Commissioner shall collect in advance the following fees and miscellaneous charges:

- (1) Facsimile copies, per page ..... \$0.50
- (2) Hard copy printout of one microfiche page ..... 1.00
- (3) Electronic copies, per page ..... 0.25

(b) The commissioner shall deposit all such fees required by this section directly into the State Insurance Department Trust Fund as special revenues.

**History.** Acts 1993, No. 652, § 8; 1999, No. 881, § 7.

**23-61-708. Fees for various other departmental services and products.**

(a)(1) Notwithstanding other provisions of this subchapter and notwithstanding other provisions of the Arkansas Insurance Code or other applicable Arkansas laws, the Insurance Commissioner shall by companion rule to this subchapter prescribe the amount and manner of payment of new, additional, or increased but nonrefundable fees due as special revenues to the State Insurance Department Trust Fund for the following services, documents, or publications provided by the State Insurance Department, including, but not limited to:

- (A) Filing by insurers of each agent appointment termination form;
- (B) Application for or issuance of original certification to be a course provider for agent prelicensing or continuing education in this state;
- (C) Application for or issuance of renewal certification to be a course provider for agent prelicensing or continuing education in this state;
- (D) Filing fees for applications filed for original examinations and retake examinations administered by the department;
- (E) Filing of initial and renewal insurer appointments of resident insurance agencies, corporations, or firms and partnerships;
- (F) Annual renewal of each certificate of registration issued to a third party administrator;
- (G) A filing and processing fee for filing legal process with the department wherein the commissioner is serving as official agent for service of process;
- (H) Filing and processing fees for filing specimen insurance policy and contract forms of all types with the department;
- (I) A filing fee for obtaining department lists of various kinds of licensees or registrants; and



(J) Similar department services and products.

(2) In the event the commissioner is required by laws enacted contemporaneous with or subsequent to this subchapter to perform other duties or incur other obligations, and in the event current revenues of the department, including, but not limited to, those revenues produced by this subchapter, are not sufficient for the commissioner to perform those new or additional duties efficiently and promptly or to the extent the commissioner deems necessary, then the commissioner shall enact new or additional or increased fees for departmental services, documents, and publications, but such fees shall only be adopted and imposed in a rule and regulation promulgated by the commissioner after notice and a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and other applicable sections of the Arkansas Insurance Code and other laws.

(3) The fees described in this section and prescribed in amount and frequency of payment in the commissioner's companion rule to this subchapter shall be payable to the State Insurance Department Trust Fund as special revenues for the support and operation of the State Insurance Department.

(b)(1)(A) The fees for various department services, documents, or publications shall be divided into two (2) categories, Category A fees and Category B fees, and shall be so specified in the companion rule to this subchapter.

(B) Category A fees at a maximum of one thousand five hundred dollars (\$1,500) per transaction shall consist of those fees representing material or substantive corporate transactions of licensees, including, but not limited to, holding company changes in control of insurers or similar entities, corporate mergers and consolidation, bulk, or assumptive reinsurance transactions, as well as department products and services which would require a substantial commitment of department resources per transaction.

(C) Category B fees at a maximum of fifty dollars (\$50.00) per transaction shall consist of those fees representing other transactions of licensees, as well as department products and services which would not require a substantial commitment of department resources per transaction.

(2) In no event shall any one (1) Category A fee or Category B fee for any department service, document, or publication per transaction pursuant to this section and the commissioner's companion rule and regulation exceed the maximums listed herein.

(c) The commissioner may from time to time alter the fee amounts by rule and regulation amendment pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., but in no event shall such fee amendments necessary for continued support and operation of the department exceed the limitations set forth in this section.

(d) Insurers obligated to secure or renew agent appointments using department forms one through forty-eight (1-48) for their agent representatives on the licensing records of the State Insurance Department



pursuant to the provisions of § 23-64-514 on a new or biennial renewal basis shall no longer collect such licensure expenses, directly or indirectly, from the agent licensee, or exact any form of reimbursement for the statutory appointment fees, or pass such costs along to the agent licensee, directly or indirectly, as any other type of charge, notwithstanding the provision of any agency, brokerage, or employment contract or agreement with the agent to the contrary.

**History.** Acts 1993, No. 652, § 9; 2001, No. 580, § 2.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 652, § 9, this section also provided: "The reference to insurers [in a chart amended out of Acts 1993, No. 652 prior to its passage] is deemed to include hospital and medical service corporations, fraternal benefit societies, farmers mutual aid associations, health maintenance organizations, legal insurers, and stipulated premium insurers."

Acts 2001, No. 580 § 29, provided: "Ef-

fective date. The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds that implementation of the act is not possible by July 1, 2002."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-61-709. Insurance Commissioner's authority, powers, and duties.

(a) The Insurance Commissioner shall be duly authorized to promulgate rules and regulations necessary to effectuate the purposes of this subchapter.

(b) Upon his or her determination and finding that State Insurance Department appropriations or funding is insufficient to operate the department efficiently or to allow the commissioner to perform all of his or her statutorily mandated duties and tasks, the commissioner may, in his or her discretion, by rule and regulation following notice and a public hearing, increase the amounts of the fees, license fees, fines, penalties, and revenues as provided in this subchapter for deposit into the State Insurance Department Trust Fund as special revenues.

(c)(1) Further, in his or her discretion the commissioner may establish and collect as special revenues additional or increased fees and penalties not otherwise specified in this subchapter, for direct deposit into the State Insurance Department Trust Fund as special revenues if the fees and revenues provided by this subchapter are insufficient, in connection with all other revenues appropriated to and funded for the department, to defray all the expenses of the department in the efficient discharge of its administrative and regulatory powers and duties as prescribed by law.

(2) Any special revenues and fees established by the commissioner by the authority of this section shall be classified in and meet the

criteria of the Category A fees or Category B fees specified by § 23-61-708.

(3) Upon collection by the commissioner, these funds shall be deposited as special revenues directly into the State Insurance Department Trust Fund.

(4) The commissioner may from time to time alter the amounts of the fees specified in the companion rules to this subchapter by amending the rules pursuant to the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as necessary to the continued support and operation of the department.

**History.** Acts 1993, No. 652, § 10.

### **23-61-710. Trust fund — State Insurance Department vouchers and Auditor of State.**

(a) All fees, license fees, and additional or increased license or registration fees, fines, penalties, and revenues provided for in this subchapter received as special revenues for the State Insurance Department Trust Fund and deposited therein shall be deemed for all purposes revenues of the State Insurance Department Trust Fund and of the State Insurance Department for the sole support, operation, and maintenance of the department, and, when paid into the State Treasury by the Insurance Commissioner, shall be maintained by the State Treasury as the State Insurance Department Trust Fund, separate from all other funds, and available only for the payment of the expenses of the department pursuant to the appropriations therefor.

(b) The Auditor of State shall, upon proper voucher from the commissioner, issue his or her warrant on the Treasurer of State in payment of all salaries and other expenses incurred in the administration of this subchapter.

(c) The commissioner shall at the end of each biennium period cause to be transferred into the General Revenue Fund Account of the State Apportionment Fund the excess of the State Insurance Department Trust Fund moneys over an amount equal to three (3) fiscal-year budgets for the department.

**History.** Acts 1993, No. 652, § 11; 1993, No. 901, § 46.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 901, § 46, subsection (c) of this section began: "On and after the effective date of The State Insurance De-

partment Trust Fund Act of 1993, § 23-61-701 et seq., as it is popularly known, but commencing no later than July 1, 1993, the Insurance Commissioner shall at the end of each biennium period thereafter cause to be...."

### **23-61-711. Fees additional to all others currently payable — Exception.**

The fees assessed or imposed by this subchapter upon insurers, as defined or referenced in § 23-61-703, and the fees assessed or imposed in § 17-19-301 and §§ 23-61-706 — 23-61-709 upon professional bail

bond companies, insurers, insurance agents, brokers, and other licensees or registrants are imposed in addition to all other fees, assessments, premium and privilege taxes, penalties, and other such payments such licensees or registrants pay the State of Arkansas through the State Insurance Department or other state or governmental agencies pursuant to applicable Arkansas laws, except that insurers' payments of these administrative and financial regulation fees in § 23-61-703 are expressly and in pertinent part to be paid in lieu of payment of department examiners' salaries, wages, and compensation due at or after each examination conducted on the insurer by the department's examiners pursuant to the provisions of § 23-61-201 et seq., and, in particular, § 23-61-206. Therefore, insurers shall still be liable for payment of and shall pay department examiners' expenses for food, lodging, and travel as directed under § 23-61-201 et seq.

**History.** Acts 1993, No. 652, § 12.

**Publisher's Notes.** The reference to the code section in Title 17 has been updated to reflect the 1995 realphabetization of the chapters in that title.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 652, this section contained a second sentence which read: "In

this regard the provisions of Section 3 of this Act are in fact deemed to supersede the provisions of § 23-61-206 in pertinent part but only as to examiners' salaries, wages and compensation (excluding expense reimbursement due and liable for food, lodging and travel expenses)."

## CHAPTER 62

### KINDS OF INSURANCE — REINSURANCE

#### SUBCHAPTER.

1. DEFINITIONS.
2. REINSURANCE GENERALLY.
3. ARKANSAS CREDIT FOR REINSURANCE LAW.
4. REINSURANCE INTERMEDIARY ACT.

#### SUBCHAPTER 1 — DEFINITIONS

##### SECTION.

- 23-62-101. Definitions not mutually exclusive.
- 23-62-102. Life insurance.
- 23-62-103. Accident and health insurance.
- 23-62-104. Property insurance.
- 23-62-105. Casualty insurance.

##### SECTION.

- 23-62-106. Surety insurance.
- 23-62-107. Marine insurance.
- 23-62-108. Title insurance.
- 23-62-109. Funding agreements.
- 23-62-110. Mortgage guaranty insurance.
- 23-62-111. Employee benefit stop-loss insurance.

**Effective Dates.** Acts 1993, No. 1283, § 5: Apr. 21, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that some insurance companies doing business within this state are issuing contracts, typically

or commonly denominated either funding agreements or "guaranteed investment contracts" which do not meet the definition of either "insurance" or "annuity" as otherwise set forth in this code and which, accordingly, are beyond the technical au-



thority of such companies to issue; and further, the General Assembly finds that such activity should be permitted to continue but only under the explicit control and regulation of the insurance commissioner and only to the persons and entities and for the purposes set forth herein. There being a potential danger of such agreements being issued which do not meet the regulatory criteria herein set forth, and such not being in the public interest, the foregoing § 23-62-109 should go into effect immediately to protect the public interest as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither

approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 506, § 10: January 1, 2006, by its own terms.

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 684, § 10, provided: “Sections 1 through 9 of this act take effect January 1, 2008.”

## RESEARCH REFERENCES

**Am. Jur.** 43 Am. Jur. 2d, Ins., § 1 et seq.

**C.J.S.** 44 C.J.S., Ins., § 3 et seq.

**U. Ark. Little Rock L.J.** Adams, Mis-

representation in Procurement of Insurance: The Arkansas Law, 4 U. Ark. Little Rock L.J. 17.

## 23-62-101. Definitions not mutually exclusive.

It is intended that certain insurance coverages may come within the definitions of two (2) or more kinds of insurance as defined in this subchapter and §§ 23-62-201, 23-62-202, 23-62-203, 23-62-204, 23-62-205, and 23-63-701, and the inclusion of the coverage within one (1) definition shall not exclude it as to any other kind of insurance within the definition of which that coverage is reasonably includable.

**History.** Acts 1959, No. 148, § 72; A.S.A. 1947, § 66-2401.

## CASE NOTES

**In General.**

This section anticipates an overlap between certain classes of insurance, and policies insuring against the loss of human life due to accident are contained

within the larger class of life insurance policies insuring against the loss of human life due to all causes. *Dodson v. J.C. Penney Co.*, 336 F.3d 696 (8th Cir. 2003).

**23-62-102. Life insurance.**

(a) As used in the Arkansas Insurance Code, unless the context otherwise requires, "life insurance" is insurance on human lives.

(b) The transaction of life insurance includes also the granting of endowment benefits, benefits for expenses incurred in connection with death, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance.

(c) Transaction of life insurance does not include workers' compensation, as defined in § 23-62-105(a)(3).

**History.** Acts 1959, No. 148, § 73; A.S.A. 1947, § 66-2402.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## CASE NOTES

**Construction.**

Subsection (b) of this section does not limit the broad language found in subsection (a), but rather, operates to further expand the definition to also include additional benefits in event of death or dis-

memberment by accident or accidental means. *Dodson v. J.C. Penney Co.*, 336 F.3d 696 (8th Cir. 2003).

**Cited:** *Drummond Citizens Ins. Co. v. United States*, 298 F. Supp. 692 (E.D. Ark. 1969).

**23-62-103. Accident and health insurance.**

(a) As used in the Arkansas Insurance Code, unless the context otherwise requires, "accident and health insurance" is insurance of human beings against bodily injury, disablement, or death by accident or accidental means or the expense thereof or against loss of income due to disablement or expense resulting from sickness and every insurance appertaining thereto.

(b) Transaction of accident and health insurance does not include workers' compensation, as defined in § 23-62-105(a)(3).

**History.** Acts 1959, No. 148, § 74; A.S.A. 1947, § 66-2403; Acts 2001, No. 1603, § 3; 2001, No. 1604, § 9.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**23-62-104. Property insurance.**

As used in the Arkansas Insurance Code, unless the context otherwise requires, "property insurance" is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause and against loss consequential upon the loss or damage, other than noncontractual legal liability for the loss or damage.

**History.** Acts 1959, No. 148, § 75; A.S.A. 1947, § 66-2404.

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

**CASE NOTES****Bonds.**

Fidelity bond executed by the insurers was surety insurance and not property insurance. *Chandler Trailer Co. v. Lawyer's Sur. Corp.*, 535 F. Supp. 204 (E.D. Ark. 1982).

**Cited:** *Douglass v. Nationwide Mut. Ins. Co.*, 323 Ark. 105, 913 S.W.2d 277 (1996).

**23-62-105. Casualty insurance.**

(a) As used in the Arkansas Insurance Code, unless the context otherwise requires, "casualty insurance" includes:

(1) **VEHICLE INSURANCE.** Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of the vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(2) **LIABILITY INSURANCE.** Insurance against legal liability for the death, injury, or disability of any human being or for damage to property and the provision of medical, hospital, surgical, disability, or accident and health benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(3) **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(4) **BURGLARY AND THEFT.** Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation; or wrongful conversion, disposal, or concealment; or from



any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(5) **PERSONAL PROPERTY FLOATER.** Insurance upon personal effects against loss or damage from any cause under a personal property floater;

(6) **GLASS.** Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(7) **BOILER AND MACHINERY.** Insurance against any liability and loss or damage to property or interest therein resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(8) **LEAKAGE AND FIRE EXTINGUISHING EQUIPMENT.** Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings and insurance against loss or damage to sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(9) **CREDIT.** Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(10) **MALPRACTICE.** Insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of liability including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service. However, malpractice insurance shall not include abstractor's professional liability insurance;

(11) **LIVESTOCK.** Insurance against loss or damage to livestock and for services of a veterinarian for those animals;

(12) **ENTERTAINMENTS.** Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;

(13) **ELEVATOR.** Insurance against loss of or damage to any property of the insured resulting from the ownership, maintenance, or use of elevators, escalators, and moving stairways, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon elevators, escalators, and moving stairways;

(14) **ABTRACTOR'S PROFESSIONAL LIABILITY.** Insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of liability arising out of damage to the economic interest of any person as the result of negligence in rendering the professional service of an abstractor;

(15) **MORTGAGE LIEN PROTECTION.**

(A) Insurance issued at the time a loan is originated to indemnify a lender against loss from a borrower's misrepresentation or nondisclosure of an outstanding lien encumbering the borrower's property if the lender has no actual knowledge of the lien.

(B) Mortgage lien protection shall not be issued for:

(i) A transaction involving:

(a) A purchase money mortgage; or

(b) A transfer of title;

(ii) Coverage beyond the term of the loan;

(iii) Coverage for a diminution in value of secured property; or

(iv) Coverage in excess of one hundred thousand dollars (\$100,000).

(C) The borrower's credit score shall not be used to determine the amount or cost of mortgage lien protection.

(D) Mortgage lien protection insurance shall not include any other insurance coverage that may be issued by a title insurer as defined in § 23-103-402; and

(16) **MISCELLANEOUS.** Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this subchapter and §§ 23-62-201, 23-62-202, 23-62-204, 23-62-205, and 23-63-701 if that insurance is not disapproved by the Insurance Commissioner as being contrary to law or public policy.

(b) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as stated under subdivisions (a)(1), (2), (4), and (10) of this section shall for all purposes be deemed to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of the Arkansas Insurance Code applicable to life insurance or accident and health insurance.

**History.** Acts 1959, No. 148, § 76; 1985, No. 744, § 2; A.S.A. 1947, § 66-2405; Acts 2001, No. 1603, §§ 4, 5; 2009, No. 210, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2009 amendment inserted (a)(15) and redesignated the following subdivision accordingly.

## CASE NOTES

## ANALYSIS

Casualty Insurance.

Credit.

Uninsured Motorist Coverage.

**Casualty Insurance.**

Trial court did not err in granting an insured's motion for attorney fees pursuant to § 23-79-209 because it could not be reasonably argued that the insurer was not a liability insurance company, inasmuch as it issued the insured's automobile liability insurance policy, and it was the underinsured motorist section of the liability insurance policy that the insurer placed in issue by its counterclaim for a declaratory judgment; casualty insurance is part and parcel of liability insurance, and it is required to be offered to the insured as part of its liability insurance. *S. Farm Bureau Cas. Ins. Co. v. Krouse*, 2010 Ark. App. 493, — S.W.3d — (2010).

**Credit.**

A factoring agreement was held to be a contract for the purchase of an account receivable, even though the account was an open account, and did not constitute a contract for insurance of credit as defined in this section. *Manhattan Factoring Corp. v. Orsburn*, 238 Ark. 947, 385 S.W.2d 785 (1965).

**Uninsured Motorist Coverage.**

Uninsured motorist coverage constituted "casualty insurance" within the insurance code. *Farm Bureau Mut. Ins. Co. v. Mitchell*, 249 Ark. 127, 458 S.W.2d 395 (1970).

**Cited:** *Empire Life & Hosp. Ins. Co. v. Armored Planting Co.*, 247 Ark. 994, 449 S.W.2d 200 (1970); *Douglass v. Nationwide Mut. Ins. Co.*, 323 Ark. 105, 913 S.W.2d 277 (1996).

**23-62-106. Surety insurance.**

As used in the Arkansas Insurance Code, unless the context otherwise requires, "surety insurance" includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship; and

(3) Insurance indemnifying banks, bankers, brokers, and financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other risks of transportation or navigation; also, insurance against loss or damage to an insured's premises or to his or her furnishings, fixtures, equipment, safes and vaults therein caused by burglary, robbery, theft, vandalism, or malicious mischief, or any attempt thereof.

**History.** Acts 1959, No. 148, § 77; A.S.A. 1947, § 66-2406.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.



## CASE NOTES

**Fidelity Insurance.**

Fidelity bond executed by the insurers was surety insurance and not property

insurance. *Chandler Trailer Co. v. Lawyer's Sur. Corp.*, 535 F. Supp. 204 (E.D. Ark. 1982).

**23-62-107. Marine insurance.**

As used in the Arkansas Insurance Code, unless the context otherwise requires, "marine insurance" includes:

(1) Insurance against any and all kinds of loss or damage to:

(A) Vessels, craft, aircraft, cars, automobiles, and vehicles of every kind as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting shipment or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks;

(B) Person or property in connection with or appertaining to a marine, inland marine, transit, or transportation insurance, including liability for, loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of the insurance, but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance, or use of automobiles;

(C) Precious stones, jewels, jewelry, gold, silver, and other precious metals, whether used in business or trade or otherwise and whether they are in course of transportation or otherwise; and

(D) Bridges, tunnels, and other instrumentalities of transportation and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion are the only hazards to be covered; piers, wharves, docks and ships, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks; and

(2) "Marine protection and indemnity insurance", meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including

liability of the insured for personal injury, illness, or death or for loss of or damage to the property of another person.

**History.** Acts 1959, No. 148, § 78; A.S.A. 1947, § 66-2407.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### 23-62-108. Title insurance.

As used in the Arkansas Insurance Code, unless the context otherwise requires, "title insurance" is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, a defective or invalid title, adverse claim to title, or closing protection.

**History.** Acts 1959, No. 148, § 79; A.S.A. 1947, § 66-2408; Acts 2007, No. 684, § 2.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2007 amendment substituted "a defective or invalid title, adverse claim to title, or closing protection" for "or defective titles, or invalidity, or adverse claim to title."

### 23-62-109. Funding agreements.

(a)(1) As used in this section, the term "funding agreement" means an agreement which authorizes an admitted life insurer to accept funds and which provides for an accumulation of those funds for the purpose of making one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(2)(A) However, the term "funding agreement" does not include any agreement in connection with the funding of one (1) or more payments which are excludable from the gross income of the recipient under section 104(a)(2) of the Internal Revenue Code, as it may be amended or renumbered from time to time.

(B) The term "funding agreement" shall not be construed so as to include any annuity contract.

(b) An insurer authorized to deliver or issue for delivery annuity contracts in this state may deliver or issue for delivery one (1) or more funding agreements. Notwithstanding the definition of "contracts of insurance", "life insurance", and "endowment insurance" or of "annuities" within subtitle 3 of this title, the issuance or delivery of a funding agreement meeting the definition set forth in subsection (a) of this section shall constitute a lawful activity of that insurer which is reasonably related to and incidental to its insurance activities and constitutes doing an insurance business in this state.

(c)(1) Funding agreements may be issued to:

(A) Individuals;

(B) Entities authorized by this state to engage in an insurance business;

(C) Entities other than individuals and other than persons or entities authorized to engage in an insurance business, but only for the purpose of funding benefits under any employee benefit plan as defined in the Employee Retirement Income Security Act of 1974, as now or hereafter amended, maintained in the United States or in a foreign country;

(D) Fund any employee benefit plan or any other program sponsored by the United States Government, the government of any state or foreign country, or political subdivision thereof, or any agency thereof, and only if such agreement is issued in an amount of no less than five hundred thousand dollars (\$500,000); or

(E) Fund a program of an institution which has assets in excess of twenty-five million dollars (\$25,000,000).

(2) Otherwise, funding agreements may only be issued to any person or entity identified in this subsection, and in any sum, if the funding agreements are issued to fund an agreement providing for periodic payments in satisfaction of a claim and pursuant to order of a court of competent jurisdiction or a settlement agreement between the claimant and the putative or apparent obligor.

(d) No amounts shall be guaranteed or credited under a funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. The funding agreements shall not provide for payments to or by the insurer based on mortality or morbidity contingencies.

(e) Amounts paid to the insurer and proceeds applied under optional modes of settlement under the funding agreements may be allocated by the insurer to one (1) or more separate accounts pursuant to § 23-81-402, but only if the insurer has separately qualified to issue variable products and only if the policy owner has elected and directed the insurer to invest the moneys backing the funding agreement in variable accounts.

(f) Any and all funding agreements or guaranteed investment contracts issued prior to April 21, 1993, which do not meet the definition of “insurance”, “life insurance”, or “annuity” as hereinabove set forth are, nonetheless, valid obligations of the respective insurers which issue them according to the terms of the particular agreements.

(g)(1) All basic or generic funding agreement forms shall be submitted to the Insurance Commissioner for approval and pursuant to the procedures at § 23-79-109.

(2) The commissioner may adopt rules relating to:

(A) The standards to be followed in the approval of the forms of the funding agreements;

(B) The reserves to be maintained by insurers issuing the funding agreements;

(C) The accounting and reporting of funds credited under the funding agreements;

(D) The disclosure of information to be given to holders and prospective holders of the funding agreements; and



(E) The qualification and compensation of persons selling the funding agreements on behalf of insurers.

(h) Notwithstanding any other provision of law, the commissioner has sole authority to regulate the issuance and sale of the funding agreements, including the persons selling the funding agreements on behalf of insurers.

**History.** Acts 1993, No. 1283, § 1; this section, is codified as 29 U.S.C. 2001, No. 1604, § 10. § 1001 et seq. Section 104(a)(2) of the

**U.S. Code.** The Employee Retirement Internal Revenue Code is codified as 26 Income Security Act of 1974, referred to in U.S.C. § 104(a)(2).

### **23-62-110. Mortgage guaranty insurance.**

As used in the Arkansas Insurance Code, “mortgage guaranty insurance” means insurance that insures lenders against financial loss by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on improved real estate.

**History.** Acts 2005, No. 506, § 10.

was originally enacted by Acts 1959, No.

**Publisher’s Notes.** The Arkansas Insurance Code, referred to in this section, 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-62-111. Employee benefit stop-loss insurance.**

(a) As used in this subchapter, “employee benefit stop-loss insurance” means coverage that insures an employer or an employer-sponsored health plan against the risk that:

(1) One (1) claim will exceed a specific dollar amount; or

(2) The entire loss of a self-insurance plan will exceed a specific dollar amount.

(b) An insurer authorized to transact accident and health insurance business in this state may issue employee benefit stop-loss insurance in this state.

(c) An insurer shall not issue an employee benefit stop-loss insurance policy that:

(1) Has an annual attachment point for claims incurred per individual that is less than twenty thousand dollars (\$20,000);

(2) Has an annual aggregate attachment point for groups of fifty (50) or less that is lower than the greater of:

(A) Four thousand dollars (\$4,000) multiplied by the number of group members;

(B) One hundred twenty percent (120%) of expected claims; or

(C) Twenty thousand dollars (\$20,000);

(3) Has an annual aggregate attachment point for groups of fifty-one (51) or more that is lower than one hundred ten percent (110%) of expected claims; or

(4) Provides for direct coverage of health care expenses of an individual.

(d) The Insurance Commissioner may adopt rules that carry out the requirements of this section, including without limitation rules that require:

(1) Additional standards for employee benefit stop-loss insurance policies; and

(2) Disclosures to policyholders by an insurance carrier providing employee benefit stop-loss insurance.

**History.** Acts 2007, No. 496, § 4; 2009, No. 726, § 10; 2011, No. 760, § 2.

**Amendments.** The 2009 amendment subdivided (a), inserted “or an employer-sponsored health plan” in the present introductory language, and made related changes.

The 2011 amendment, in (a), substituted “this subchapter” for “the Arkansas Insurance Code” and deleted “or ‘employee benefit excess loss insurance’” following “stop-loss insurance”; rewrote (c); and added (d).

## SUBCHAPTER 2 — REINSURANCE GENERALLY

### SECTION.

23-62-201. Exception.

23-62-202. Limits of risk.

23-62-203. Rules and regulations.

### SECTION.

23-62-204. Allowance of credit.

23-62-205. Approval and notice of reinsurance.

**Effective Dates.** Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and

the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

## RESEARCH REFERENCES

**ALR.** Reinsurer’s liability for primary liability insurer’s failure to compromise or settle. 42 A.L.R.4th 1130.

**Am. Jur.** 44 Am. Jur. 2d, Ins., § 1831 et seq.

**C.J.S.** 46A C.J.S., Ins., § 1501 et seq.

### 23-62-201. Exception.

This subchapter shall not apply to insurance of wet marine and foreign trade insurance risks.

**History.** Acts 1959, No. 148, § 81; 1985, No. 804, § 8; A.S.A. 1947, § 66-2410.

### 23-62-202. Limits of risk.

Any authorized insurer may accept reinsurance only of such risks, in this state, and retain risk thereon within such limits, as it is authorized to insure.

**History.** Acts 1959, No. 148, § 81; 1985, No. 804, § 8; A.S.A. 1947, § 66-2410.

**Publisher's Notes.** Acts 1985, No. 804, § 32, provided, in part, that the act would

be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

### 23-62-203. Rules and regulations.

The Insurance Commissioner may adopt reasonable rules and regulations to implement the provisions of this subchapter.

**History.** Acts 1995, No. 1272, § 24.

**Publisher's Notes.** Former § 23-62-203 concerning payment of tax, was repealed by Acts 1987, No. 456, § 9. The

former section was derived from Acts 1959, No. 148, § 81; A.S.A. 1947, § 66-2410.

### 23-62-204. Allowance of credit.

(a)(1) Except as provided in subsection (b) of this section, no credit shall be allowed as an asset or a deduction from liability to any ceding insurer for reinsurance unless the reinsurance contract provides that in the event of the insolvency of the ceding insurer, the reinsurance is payable under one (1) or more contracts reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court without diminution because of the insolvency of the ceding insurer.

(2) The payments shall be made directly to the ceding insurer or to its domiciliary liquidator unless:

(A) The contract or other written agreement specifically provides another payee of the reinsurance in the event of the insolvency of the ceding insurer; or

(B) The assuming insurer with the consent of the direct insured or insureds has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

(b)(1) If a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, provided that the reinsurer is paid the reinsurance premiums for coverage.



(2) Payment of the reinsured claims shall be made by the reinsurer only pursuant to the direction of the guaranty association or its designated successor.

(3) Any claim payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the payment.

(c)(1) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding.

(2) During the pendency of the claim, any assuming insurer may investigate the claim and interpose at its own expense in the proceeding any defenses which it deems available to the ceding insurer or its liquidator.

(3) The expense of asserting a defense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(4) If two (2) or more assuming insurers are involved in a claim and a majority in interest elect to interpose one (1) or more defenses to the claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

**History.** Acts 1959, No. 148, § 81; 1985, No. 804, § 8; A.S.A. 1947, § 66-2410; Acts 2005, No. 506, § 11.

**Publisher's Notes.** For cumulative effect of 1985 amendment to this section, see Publisher's Notes to § 23-62-202.

### **23-62-205. Approval and notice of reinsurance.**

(a) Every insurer authorized to do business in the State of Arkansas, whether foreign, domestic, or alien, including, but not limited to, farmers' mutual aid associations or companies, reciprocal insurers, stipulated premium insurers, mutual assessment life and disability companies, and foreign fraternal benefit societies, shall petition the Insurance Commissioner for prior approval of any agreement of assumption reinsurance which provides for the ceding of Arkansas risks to an insurer not authorized to do business in this state.

(b) After notice and hearing, the commissioner may approve the agreement for reinsurance if it is found:

(1) That the agreement is fair and equitable and does not lessen or diminish any benefit to a policyholder which would have been provided by the ceding entity;

(2) That the agreement promotes the public interest and does not create a monopoly;

(3) That the agreement is not harmful to the best interests of the policyholders;

(4) That the agreement will not impair the financial condition of either the ceding insurer or the assuming insurer;

(5) That the assuming insurer is in sound financial condition; and

(6) That the assumption certificates, after being filed with and approved by the commissioner, shall be given to Arkansas policyholders affected by the agreement, provided, that notice to credit life and credit disability policyholders may be given to the creditor beneficiary of the credit life or credit disability policy.

(c) The commissioner, in his or her sole discretion, may waive notice and hearing as to any agreement under subsection (b) of this section pursuant to written motion by any party to the agreement.

(d)(1) Every insurer authorized to do business in the State of Arkansas, whether foreign, domestic, or alien, including, but not limited to, farmers' mutual aid associations or companies, reciprocal insurers, stipulated premium insurers, mutual assessment life and disability companies, and foreign fraternal benefit societies, shall file with the commissioner any agreement of assumption reinsurance which provides for the ceding of Arkansas risks to any insurer authorized to do business in this state. The agreement shall be deemed approved within thirty (30) days after the date filed.

(2) This subsection shall not apply to any agreement for assumption reinsurance which cedes Arkansas risks if the assuming insurer is authorized to do business in this state and the transaction is approved by the state insurance regulator of the domiciliary state of the ceding insurer.

(e) Any assumption certificates issued to Arkansas policyholders pursuant to assumption reinsurance agreements shall be filed with and approved by the commissioner prior to delivery to policyholders.

(f) Domestic stock and domestic mutual insurers shall be exempt from the requirements of subsections (a)-(d) of this section, but shall comply with the provisions of §§ 23-69-149 and 23-69-150, respectively.

(g) Domestic fraternal benefit societies shall be exempt from the requirements of subsections (a)-(d) of this section, but shall comply with the provisions of § 23-74-304.

**History.** Acts 1959, No. 148, § 81; 2410; Acts 1991, No. 804, § 1; 2001, No. 1985, No. 804, § 8; A.S.A. 1947, § 66- 1604, §§ 11-13.

SUBCHAPTER 3 — ARKANSAS CREDIT FOR REINSURANCE LAW

SECTION.	SECTION.
23-62-301. Title — Applicability.	23-62-305. Credit allowed a domestic ceding insurer.
23-62-302. Sections 23-62-201, 23-62-202, 23-62-204, and 23-62-205 applicable — Purpose — Construction.	23-62-306. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.
23-62-303. Report of funds withheld under reinsurance treaties.	23-62-307. Qualified United States financial institutions.
23-62-304. Agreement examination.	

## SECTION.

23-62-308. Rules and regulations.

**Effective Dates.** Acts 1977, No. 790, § 8: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 723, § 33: Mar. 25, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 506, §§ 12-14: Jan. 1, 2006, by their own terms.

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."



**23-62-301. Title — Applicability.**

(a) This subchapter may be cited as the “Arkansas Credit for Reinsurance Law”.

(b) All reserves ceded to a nonadmitted reinsurer on insurance written in this state shall be subject to the provisions of this subchapter.

**History.** Acts 1977, No. 790, § 2; A.S.A. 1947, § 66-2412; Acts 2001, No. 1603, § 6; 2007, No. 496, § 5.

**Amendments.** The 2007 amendment substituted “the ‘Arkansas Credit for Re- insurance Law’” for “‘The Model Act for the Regulation of Reserves Ceded to Non-admitted Reinsurers’” in (a), and deleted “life insurance and accident and health” preceding “insurance” in (b).

**23-62-302. Sections 23-62-201, 23-62-202, 23-62-204, and 23-62-205 applicable — Purpose — Construction.**

(a) Reinsurance of insurance risks by domestic and foreign insurance companies is also regulated under the provisions of §§ 23-62-201, 23-62-202, 23-62-204, and 23-62-205.

(b)(1) The purpose of this subchapter is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The General Assembly declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations.

(2) In furtherance of the state’s interest, the General Assembly provides a mandate that upon the insolvency of an insurer or reinsurer not domiciled in the United States that provides security to fund its obligations within the United States in accordance with this subchapter:

(A) The assets representing the security shall be maintained in the United States, and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight; and

(B) The assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies.

(3) The General Assembly further declares that the matters contained in this subchapter are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012, as it existed on January 1, 2005.

(c)(1) Nothing in this subchapter is intended to prohibit or discourage reasonable competition or to prohibit or discourage the continued availability of insurance regulated by this subchapter.

(2) The provisions of this subchapter shall be liberally construed.

**History.** Acts 1977, No. 790, § 1; A.S.A. 1947, § 66-2411; Acts 2001, No. 1603, § 7; 2005, No. 506, § 12; 2007, No. 496, § 6.

**Amendments.** The 2007 amendment,

in (a), deleted “life and accident and health” preceding “insurance” and inserted “also” preceding “regulated.”

**23-62-303. Report of funds withheld under reinsurance treaties.**

Deposits and funds withheld under reinsurance treaties shall be reported in the annual statement in the exhibit entitled "Special Deposits Not for the Protection of All Policyholders".

**History.** Acts 1977, No. 790, § 3; A.S.A. 1947, § 66-2413; Acts 1991, No. 723, § 10. **A.C.R.C. Notes.** This section was formerly codified as § 23-62-304.

**23-62-304. Agreement examination.**

The Insurance Commissioner shall have the right to examine any of the reinsurance agreements or deposit arrangements of the ceding insurer at any time.

**History.** Acts 1977, No. 790, § 4; A.S.A. 1947, § 66-2414; Acts 1991, No. 723, § 11. **A.C.R.C. Notes.** This section was formerly codified as § 23-62-305.

**23-62-305. Credit allowed a domestic ceding insurer.**

(a)(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of this subchapter.

(2) Credit shall be allowed under subsection (b), subsection (c), or subsection (d) of this section only for cessions of the kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in:

(A) Its state of domicile; or

(B) In the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance.

(3) Credit shall be allowed under subsection (d) or subsection (e) of this section only if the applicable requirements of subsection (g) of this section have been satisfied.

(b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

(c)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:

(A) Files with the Insurance Commissioner evidence of its submission to this state's jurisdiction;

(B) Submits to this state's authority to examine its books and records;

(C) Is licensed to transact insurance or reinsurance in at least one (1) state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state; and

(D) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(i) Maintains a surplus regarding policyholders in an amount not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission; or

(ii) Maintains a surplus regarding policyholders in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the commissioner.

(2) No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

(d)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(A) Maintains a surplus regarding policyholders in an amount not less than twenty million dollars (\$20,000,000); and

(B) Submits to the authority of this state to examine its books and records.

(2) The requirement of subdivision (d)(1)(A) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(e)(1)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in § 23-62-307(b), for the payment of the valid claims of its United States ceding insurers, their assigns, and their successors in interest.

(B) To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers.

(C) The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

(2)(A) A credit for reinsurance shall not be granted under this section unless the form of the trust and any amendments to the trust have been approved by:

(i) The insurance commissioner of the state where the trust is domiciled; or

(ii) The insurance commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.



(B)(i) The form of the trust and any trust amendments also shall be filed with the insurance commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

(ii) The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States.

(iii) The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and their successors in interest.

(iv) The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(C)(i) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(ii) No later than February 28 of each year, the trustees of the trust shall:

(a) Report to the commissioner in writing the balance of the trust;

(b) List the trust's investments at the preceding year's end; and

(c) Certify either the date of termination of the trust or that the trust will not expire prior to the following December 31.

(3)(A) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars (\$20,000,000).

(B)(i) In the case of a group, including incorporated and individual unincorporated underwriters:

(a) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(b) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this act, the trust shall consist of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(c) In addition to the other trusts under this subdivision (e)(3)(B), the group shall maintain in trust a trusteed surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(ii) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(iii) Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner:

(a) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or

(b) If a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(f) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (b), subsection (c), subsection (d), or subsection (e) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(g)(1) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (d) and (e) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall:

(i) Submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(ii) Comply with all requirements necessary to give the court jurisdiction; and

(iii) Abide by the final decision of the court or of any appellate court in the event of an appeal; and

(B) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(2) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if the obligation is created in the agreement.

(h) If the assuming insurer does not meet the requirements of subsection (b), subsection (c), or subsection (d) of this section, the credit permitted under subsection (e) of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (e)(3) of this section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, then the trustee shall comply with an order of the insurance commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the insurance commissioner with regulatory oversight all of the assets of the trust fund;

(2) The assets shall be distributed by and claims shall be filed with and valued by the insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(3) If the insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or a part of the assets shall be returned by the insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(4) The grantor shall waive any right otherwise available to it under any law of the United States that is inconsistent with this subsection.

**History.** Acts 1977, No. 790, § 5; A.S.A. 1947, § 66-2415; Acts 1991, No. 723, § 12; 1995, No. 1272, § 7; 2005, No. 506, § 13.

**A.C.R.C. Notes.** This section was formerly codified as § 23-62-303.

**Meaning of “this act”.** Acts 2005, No. 506, codified as §§ 9-14-504, 21-2-704, 21-2-705, 21-2-709, 21-2-711, 23-40-120, 23-61-113, 23-61-205, 23-62-110, 23-62-204, 23-62-302, 23-62-305, 23-62-306, 23-63-

205, 23-63-206, 23-63-215, 23-63-216, 23-63-304, 23-63-503, 23-63-506, 23-63-514, 23-63-515, 23-63-805, 23-63-841, 23-63-909, 23-63-1601, 23-64-512, 23-66-310, 23-68-128, 23-69-108, 23-69-129, 23-69-156, 23-76-110, 23-77-107, 23-79-121, 23-79-123, 23-81-303, 23-81-304, 23-81-313, 23-84-103, 23-86-106, 23-86-508, 23-89-213, 26-57-614, 27-19-717, 27-19-719, 27-19-721.

### **23-62-306. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.**

(a) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 23-62-305 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.

(b) The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held:

(1) In the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or

(2) In the case of a trust, in a qualified United States financial institution as defined in § 23-62-307(b).

(c) The security may be in the form of:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3)(A) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in § 23-62-307(a), effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement.



(B) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, shall continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the Insurance Commissioner.

**History.** Acts 1991, No. 723, § 13;  
2005, No. 506, § 14.

### **23-62-307. Qualified United States financial institutions.**

(a) For purposes of this subchapter, a “qualified United States financial institution” means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Insurance Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) A “qualified United States financial institution” means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(1) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

**History.** Acts 1991, No. 723, § 13.

**Publisher's Notes.** Acts 1991, No. 723, § 15 provided: “Section 12 through 13 of this Act shall apply to all sessions after the effective date of this Act under rein-

surance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after September 30, 1991.”

### **23-62-308. Rules and regulations.**

The Insurance Commissioner may adopt rules and regulations implementing the provisions of §§ 23-62-303 — 23-62-307.

**History.** Acts 1991, No. 723, § 14.

### SUBCHAPTER 4 — REINSURANCE INTERMEDIARY ACT

#### SECTION.

- 23-62-401. Short title.
- 23-62-402. Definitions.
- 23-62-403. Qualified United States financial institutions.
- 23-62-404. Licensure.
- 23-62-405. Required contract provisions — Reinsurance intermediary brokers.
- 23-62-406. Books and records — Reinsurance intermediary brokers.
- 23-62-407. Duties of insurers utilizing the services of a reinsurance intermediary broker.

#### SECTION.

- 23-62-408. Required contract provisions — Reinsurance intermediary managers.
- 23-62-409. Prohibited acts.
- 23-62-410. Duties of reinsurers utilizing the services of a reinsurance intermediary manager.
- 23-62-411. Examination authority.
- 23-62-412. Penalties and liabilities.
- 23-62-413. Rules and regulations.

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**Effective Dates.** Acts 1993, No. 527, § 20: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Insurance, 16 U. Ark. Little Rock L.J. 141.

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#### 23-62-401. Short title.

This subchapter may be cited as the "Reinsurance Intermediary Act".

**History.** Acts 1993, No. 527, § 1.

**23-62-402. Definitions.**

As used in this subchapter:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;

(2) "Controlling person" means any person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary;

(3) "Insurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer;

(4) "Licensed producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law;

(5) "Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as these terms are defined in subdivisions (6) and (7) of this section;

(6) "Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer;

(7)(A) "Reinsurance intermediary manager" means any person, firm, association, or corporation who has authority to bind, or who manages, all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such a reinsurer whether known as a reinsurance intermediary manager, a manager, or other similar term.

(B) Notwithstanding the above, the following persons shall not be considered reinsurance intermediary managers, with respect to such a reinsurer, for the purposes of this subchapter:

(i) An employee of the reinsurer;

(ii) A United States manager of the United States branch of an alien reinsurer;

(iii) An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and whose compensation is not based on the volume of premiums written; and

(iv) The manager of a group, association, pool, or organization of insurers which engages in joint underwriting or joint reinsurance and which is subject to examination by the insurance commissioner of the state in which the manager's principal business office is located;

(8) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance; and



(9) “To be in violation” means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this subchapter.

**History.** Acts 1993, No. 527, § 1.

### **23-62-403. Qualified United States financial institutions.**

For purposes of this subchapter, a “qualified United States financial institution” means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Insurance Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

**History.** Acts 1993, No. 527, § 1.

### **23-62-404. Licensure.**

(a) No person, firm, association, or corporation shall act as a reinsurance intermediary broker in this state if the reinsurance intermediary broker maintains an office either directly, or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation:

(1) In this state, unless the reinsurance intermediary broker is a licensed producer in this state; or

(2) In another state, unless the reinsurance intermediary broker is a licensed producer in this state or the reinsurance intermediary broker is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association, or corporation shall act as a reinsurance intermediary manager:

(1) For a reinsurer domiciled in this state, unless the reinsurance intermediary manager is a licensed producer in this state;

(2) In this state, if the reinsurance intermediary manager maintains an office either directly or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary manager is a licensed producer in this state; and

(3) In another state for a nondomestic insurer, unless the reinsurance intermediary manager is a licensed producer in this state or the person is licensed in this state as a nonresident reinsurance intermediary.

(c) The Insurance Commissioner may require a reinsurance intermediary manager subject to subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(d)(1)(A) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation who has complied with the requirements of this subchapter.

(B) Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto.

(C) Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof, to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements thereto.

(2)(A) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this subchapter for designation of service of process upon unauthorized insurers; and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the non-resident reinsurance intermediary may be served.

(B) The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change shall not become effective until acknowledged by the commissioner.

(e)(1) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any one (1) of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of the license.

(2) Upon written request therefor, the commissioner will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(f) Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section.

**History.** Acts 1993, No. 527, § 1; 1995, No. 1272, §§ 8, 9.

**23-62-405. Required contract provisions — Reinsurance intermediary brokers.**

(a) Transactions between a reinsurance intermediary broker and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party.

(b) The authorization shall, at a minimum, provide that:

(1) The insurer may terminate the reinsurance intermediary broker's authority at any time;

(2) The reinsurance intermediary broker will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary broker, and remit all funds due to the insurer within thirty (30) days of receipt;

(3) All funds collected for the insurer's account will be held by the reinsurance intermediary broker in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in § 23-62-403;

(4) The reinsurance intermediary broker will comply with § 23-62-406;

(5) The reinsurance intermediary broker will comply with the written standards established by the insurer for the cession or retrocession of all risks; and

(6) The reinsurance intermediary broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

**History.** Acts 1993, No. 527, § 1.

**23-62-406. Books and records — Reinsurance intermediary brokers.**

(a) For at least ten (10) years after expiration of each contract of reinsurance transacted by the reinsurance intermediary broker, the reinsurance intermediary broker will keep a complete record for each transaction showing:

(1) The type of contract, limits, underwriting restrictions, classes or risks, and territory;

(2) The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

(3) The reporting and settlement requirements of balances;

(4) The rate used to compute the reinsurance premium;

(5) The names and addresses of assuming reinsurers;

(6) The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary broker;



- (7) Related correspondence and memoranda;
- (8) Proof of placement;
- (9) Details regarding retrocessions handled by the reinsurance intermediary broker, including the identity of retrocessionaires and the percentage of each contract assumed or ceded;
- (10) Financial records, including, but not limited to, premium and loss accounts; and
- (11) When the reinsurance intermediary broker procures a reinsurance contract on behalf of a licensed ceding insurer:
  - (A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
  - (B) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
- (b) The insurer will have access to and the right to copy and audit all accounts and records maintained by the reinsurance intermediary broker related to its business in a form usable by the insurer.

**History.** Acts 1993, No. 527, § 1.

**23-62-407. Duties of insurers utilizing the services of a reinsurance intermediary broker.**

- (a) An insurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary broker on its behalf unless the person is licensed as required by § 23-62-404.
- (b) An insurer may not employ an individual who is employed by a reinsurance intermediary broker with which it transacts business, unless the reinsurance intermediary broker is under common control with the insurer and subject to the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.
- (c) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary broker with which it transacts business.

**History.** Acts 1993, No. 527, § 1.

**23-62-408. Required contract provisions — Reinsurance intermediary managers.**

- (a) Transactions between a reinsurance intermediary manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors.
- (b) At least thirty (30) days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the Insurance Commissioner for approval.
- (c) The contract shall, at a minimum, contain provisions that:
  - (1)(A) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager.

(B) The reinsurer may immediately suspend the authority of the reinsurance intermediary manager to assume or cede business during the pendency of any dispute regarding the cause for termination;

(2) The reinsurance intermediary manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;

(3)(A) All funds collected for the reinsurer's account will be held by the reinsurance intermediary manager in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in § 23-62-403.

(B) The reinsurance intermediary manager may retain no more than three (3) months' estimated claims payments and allocated loss adjustment expenses.

(C) The reinsurance intermediary manager shall maintain a separate bank account for each reinsurer that it represents;

(4) For at least ten (10) years after expiration of each contract of reinsurance transacted by the reinsurance intermediary manager, the reinsurance intermediary manager will keep a complete record for each transaction showing:

(A) The type of contract, limits, underwriting restrictions, classes or risks, and territory;

(B) The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(C) The reporting and settlement requirements of balances;

(D) The rate used to compute the reinsurance premium;

(E) The names and addresses of reinsurers;

(F) The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary manager;

(G) Related correspondence and memoranda;

(H) Proof of placement;

(I) Details regarding retrocessions handled by the reinsurance intermediary manager, as permitted by § 23-62-410(d), including the identity of retrocessionaires and the percentage of each contract assumed or ceded;

(J) Financial records, including, but not limited to, premium and loss accounts; and

(K) When the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative;

(5) The reinsurer will have access to and the right to copy all accounts and records maintained by the reinsurance intermediary manager related to its business in a form usable by the reinsurer;

(6) The contract cannot be assigned in whole or in part by the reinsurance intermediary manager;

(7) The reinsurance intermediary manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;

(8) Set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary manager may levy against the reinsurer;

(9) If the contract permits the reinsurance intermediary manager to settle claims on behalf of the reinsurer:

(A) All claims will be reported to the reinsurer in a timely manner;

(B) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) Involves a coverage dispute;

(iii) May exceed the reinsurance intermediary manager's claims settlement authority;

(iv) Is open for more than six (6) months; or

(v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(C) All claim files will be the joint property of the reinsurer and the reinsurance intermediary manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary manager shall have reasonable access to and the right to copy the files on a timely basis; and

(D) Any settlement authority granted to the reinsurance intermediary manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary manager, then the interim profits will not be paid until one (1) year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to § 23-62-410(c);

(11) The reinsurance intermediary manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;

(12) The reinsurer shall periodically, at least semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary manager;



(13) The reinsurance intermediary manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract; and

(14) The acts of the reinsurance intermediary manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

**History.** Acts 1993, No. 527, § 1.

### **23-62-409. Prohibited acts.**

The reinsurance intermediary manager shall not:

(1)(A) Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions.

(B) The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(2) Commit the reinsurer to participate in reinsurance syndicates;

(3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he or she is appointed;

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent (1%) of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(5)(A) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer.

(B) If prior approval is given, a report must be promptly forwarded to the reinsurer;

(6) Jointly employ an individual who is employed by the reinsurer; or

(7) Appoint a reinsurance intermediary submanager.

**History.** Acts 1993, No. 527, § 1.

### **23-62-410. Duties of reinsurers utilizing the services of a reinsurance intermediary manager.**

(a) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary manager on its behalf unless the person is licensed as required by § 23-62-404.

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary manager which the reinsurer has engaged, prepared by an independent certified accountant in a form acceptable to the Insurance Commissioner.

(c)(1) If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary manager.

(2) This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with a reinsurance intermediary manager.

(e) Within thirty (30) days of termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of the termination to the commissioner.

(f)(1) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary manager.

(2) This subsection shall not apply to relationships governed by the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.

**History.** Acts 1993, No. 527, § 1.

### **23-62-411. Examination authority.**

(a)(1) A reinsurance intermediary shall be subject to examination by the Insurance Commissioner.

(2) The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(b) A reinsurance intermediary manager may be examined as if it were the reinsurer.

**History.** Acts 1993, No. 527, § 1.

### **23-62-412. Penalties and liabilities.**

(a) A reinsurance intermediary, insurer, or reinsurer found by the Insurance Commissioner, after a hearing conducted in accordance with §§ 23-61-301 — 23-61-307, to be in violation of any provision of this subchapter shall:

(1) For each separate violation, pay a penalty in an amount not exceeding five thousand dollars (\$5,000);

(2) Be subject to revocation or suspension of its license; and

(3) If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(b) The decision, determination, or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance law.

(d) Nothing contained in this subchapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties, or confer any rights to those persons.

**History.** Acts 1993, No. 527, § 1.

### **23-62-413. Rules and regulations.**

The Insurance Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this subchapter.

**History.** Acts 1993, No. 527, § 1.

## **CHAPTER 63**

### **INSURANCE COMPANIES GENERALLY**

#### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. AUTHORITY TO DO BUSINESS.
3. SERVICE OF PROCESS.
4. RESIDENT AGENTS AND COUNTERSIGNATURES. [REPEALED.]
5. INSURANCE HOLDING COMPANY REGULATORY ACT.
6. FINANCIAL REPORTING STANDARDS.
7. LIMIT OF RISK.
8. INVESTMENTS.
9. DEPOSITS.
10. SURETIES ON BONDS.
11. BUSINESS TRANSACTED WITH PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURER ACT.
12. ANNUAL REPORTS BY PROPERTY AND CASUALTY INSURERS.
13. RISK-BASED CAPITAL ACT.
14. DISCLOSURE OF MATERIAL TRANSACTIONS ACT.
15. RISK-BASED CAPITAL REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS.
16. LICENSING AND REGULATION OF CAPTIVE INSURERS.
17. PROTECTED CELL COMPANY ACT.
18. AUDITS OF MEDICAL PROVIDERS.
19. PROPERTY AND CASUALTY ACTUARIAL OPINION LAW.

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#### **RESEARCH REFERENCES**

**ALR.** "Retaliatory" statutes imposing special taxes or fees on foreign insurers doing business within the state. 30 A.L.R.4th 873.

**Am. Jur.** 43 Am. Jur. 2d, Ins., § 55 et seq.

**C.J.S.** 44 C.J.S., Ins., § 96 et seq.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Insurance, 5 U. Ark. Little Rock L.J. 153.

Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

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## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 23-63-101. [Repealed.]
- 23-63-102. Retaliation for foreign taxes, fees, restrictions, etc.
- 23-63-103. Retaliation for unjustified refusal to permit business because of similar name.
- 23-63-104. Domicile of alien insurer.
- 23-63-105. Service contracts to perform administrative functions.
- 23-63-106. [Repealed.]
- 23-63-107. Prompt processing of payment by insurer.
- 23-63-108. [Repealed.]
- 23-63-109. Natural causes.
- 23-63-110. Policy cancellation or premium increase.
- 23-63-111. Policyholder's right to loss information.

## SECTION.

- 23-63-112. Notice of intent to settle.
- 23-63-113. Agreement required for access to contracting agent's panel of contracted health care providers or contracted reimbursement rates — Identification of network discounts applicable to provider claims required on subscriber identification cards.
- 23-63-114. Written management and service agreements.
- 23-63-115. Agreement between insurers and dentists establishing fees for noncovered service prohibited — Definitions.

**Effective Dates.** Acts 1973, No. 66, § 12: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1110, § 5: Apr. 4, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state concerning insurance matters covered by this act are inadequate for the protection of the public. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the

expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2011, No. 566, § 2: Mar. 22, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that insurers are placing limitations on fees for noncovered services when patients have dental coverage; that by removing limitations on the fees charged for noncovered services, dentists will have additional treatment options for patients; and that this act is immediately necessary because it expands treatment options for patients who need immediate dental services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

**23-63-101. [Repealed.]**

**Publisher's Notes.** This section, concerning applicability, was repealed by Acts 2001, No. 1604, § 14. The section was

derived from Acts 1959, No. 148, § 67; A.S.A. 1947, § 66-2225.

**23-63-102. Retaliation for foreign taxes, fees, restrictions, etc.**

(a) The Insurance Commissioner shall impose upon any insurer or upon the agent or representative of that insurer of any other state or any foreign country doing business in the State of Arkansas the same taxes, licenses, and other fees, in the aggregate, and the same fines, penalties, deposit requirements or other material requirements, obligations, prohibitions, or restrictions that are imposed upon Arkansas insurers or upon their agents or representatives by the laws of the other state or its political subdivisions or the other country or its provinces or political subdivisions.

(b) This section does not apply to:

(1) Application fees, examination fees, license fees, appointment fees, and continuation fees for agents, adjusters, service representatives, or consultants; or

(2)(A) Personal income taxes, ad valorem taxes on real or personal property, or special purpose obligations, fees, or assessments imposed by the other state in connection with particular kinds of insurance, other than property insurance.

(B) However, the commissioner shall consider deductions from premium taxes or other taxes payable allowed because of real estate or personal property taxes paid in determining the propriety and extent of retaliatory action under this section.

(c) For reporting years beginning on or after January 1, 2005, neither this section nor § 23-63-103 shall apply to any foreign insurer if more than fifteen percent (15%) of its capital stock is owned by a corporation organized under the laws of this state and domiciled within this state.

(d) In addition to the funds now appropriated and set aside for the use and benefit of firemen's relief and pension funds by § 24-11-809, there is appropriated and set aside for the use and benefit of the firemen's relief and pension funds the additional taxes, authorized by subsections (a)-(c) of this section, on all premiums collected by all fire, tornado, and marine insurance companies, corporations, or associations incorporated under the laws of any state or nation other than the State of Arkansas, in all cities and towns in the State of Arkansas, coming within the provisions of § 24-11-809.

**History.** Acts 1959, No. 148, § 67; A.S.A. 1947, § 66-2225; Acts 2005, No. 1965, § 1.

**A.C.R.C. Notes.** Acts 2005, No. 1965, § 2, provided: "Section 1 of this act shall

first apply to the annual premium tax reports of foreign and alien insurers doing business under an existing Arkansas certificate of authority for the reporting years beginning on and after January 1, 2005."

**23-63-103. Retaliation for unjustified refusal to permit business because of similar name.**

Whenever any other state or foreign country refuses to permit any life insurer domiciled in Arkansas to enter in and transact insurance in the state or country upon the grounds that the name of the Arkansas insurer is the same or similar to the name of a life insurer domiciled in the other state or country, the Insurance Commissioner, if satisfied that no such similarity of names actually exists, that the refusal is unjustified, and that the Arkansas insurer should be permitted to do business in the other state or country, may, in his or her discretion, suspend or revoke the certificate of authority in Arkansas of that life insurer domiciled in the other state or country whose name has been so declared to be similar to that of the Arkansas insurer.

**History.** Acts 1959, No. 148, § 67; § 23-103-101 et seq., is abolished and its powers and duties are transferred to the State Insurance Department by a type 3 transfer under § 25-2-106. The transfer shall include the authorized positions of the board but shall not include the personnel of the board."

**A.C.R.C. Notes.** Acts 2007, No. 684, § 1, provided: "Effective January 1, 2008, the Arkansas Title Insurance Agents' Licensing Board established by the Arkansas Title Insurance Agents' Licensing Act,

**23-63-104. Domicile of alien insurer.**

(a) For the purpose of the Arkansas Insurance Code, except as provided under § 23-68-102(6), the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the Insurance Commissioner at time of admission to this state or within six (6) months after June 11, 1959, whichever date is the later, and may be any one (1) of the following states:

(1) That in which the insurer was first authorized to transact insurance;

(2) That in which is located the insurer's principal place of business in the United States; or

(3) That in which is held the larger deposit of trustee assets of the insurer for the protection of its policyholders, or policyholders and creditors, in the United States.

(b) If the insurer makes no designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

**History.** Acts 1959, No. 148, § 67; A.S.A. 1947, § 66-2225.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.



### 23-63-105. Service contracts to perform administrative functions.

(a)(1) No domestic insurer shall make any contract with any insurance company or holding company or any other type of company whereby the company is to perform substantially all of the administrative functions for the insurer until that contract is filed with and has received prior written approval by the Insurance Commissioner.

(2) Administrative functions of an insurer include, but are not limited to, underwriting, policy issue, accounting, premium notice preparation, agents' commission statements, other periodical accounting reports, preparation of annual convention statements, and managerial consulting services.

(b) Any disapproval by the commissioner shall be delivered to the insurer in writing, stating the grounds therefor.

(c) The commissioner shall disapprove any contract if he or she finds that it:

- (1) Subjects the insurer to excessive charges;
- (2) Is to extend for an unreasonable length of time;
- (3) Does not contain fair and adequate standards of performance; or
- (4) Contains other inequitable provisions which impair the proper interests of stockholders or policyholders of the insurer.

(d)(1) All service contracts approved under this section shall be submitted annually to the commissioner for review and approval on the anniversary date of first approval.

(2) The commissioner, in his or her discretion, may require submission of a contract for review at any time if he or she feels a review would be in the best interest of stockholders or policyholders of the insurer.

(3) Any contract not submitted in accordance with this act shall be deemed disapproved as of the day following the day that contract should have been submitted.

(e) The provisions of this section shall not apply to contracts of domestic licensees governed by the provisions of:

- (1) Sections 23-63-514 and 23-63-515 of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.;
- (2) The Managing General Agents Act, § 23-64-401 et seq.; and
- (3) Section 23-69-137 concerning contracts for management and exclusive agents.

**History.** Acts 1973, No. 66, § 11; A.S.A. 1947, § 66-2227; Acts 1999, No. 327, § 1.

**Meaning of "this act".** Acts 1973, No. 66, codified as §§ 23-60-109, 23-63-105,

23-63-207, 23-63-213, 23-64-217 [transferred], 23-64-218 [transferred], 23-64-221 [transferred], 23-65-310, 23-87-103, 23-87-104, 23-89-304.

### 23-63-106. [Repealed.]

**Publisher's Notes.** This section, concerning the method of payment of claims, was repealed by Acts 2001, No. 1604,

§ 15. The section was derived from Acts 1983, No. 477, § 2; A.S.A. 1947, § 66-2017.

**23-63-107. Prompt processing of payment by insurer.**

(a) No insurer shall intentionally or unreasonably delay, for more than three (3) business days after presentment for collection, the processing of any properly executed and endorsed check or draft issued in settlement of an insurance claim.

(b) It is the intent of the General Assembly that insureds or claimants shall be paid their settlement proceeds at the earliest possible time.

(c) Any insurer violating this section shall pay the insured or claimant a penalty of two hundred dollars (\$200) or fifteen percent (15%) of the face amount of the check or draft, whichever is higher.

**History.** Acts 1983, No. 477, § 3; A.S.A. 1947, § 66-2018.

**23-63-108. [Repealed.]**

**Publisher's Notes.** This section, concerning the consumer information system, was repealed by Acts 2001, No. 1604, § 16. The section was derived from Acts 1991, No. 799, § 1; 1993, No. 901, § 6.

**23-63-109. Natural causes.**

(a)(1) No insurance policy or contract covering damages to property shall be cancelled nor the renewal thereof denied solely as a result of claims arising from natural causes.

(2) "Natural cause" is defined as an act occasioned exclusively by the violence of nature where all human agency is excluded from creating or entering into the cause of the damage or injury.

(b) Any insurer which violates the provisions of this section shall be subject to the procedures and penalties provided under the Trade Practices Act, § 23-66-201 et seq.

**History.** Acts 1997, No. 1110, § 1.

**23-63-110. Policy cancellation or premium increase.**

(a) No insurance policy or contract after being issued by an insurer authorized to transact business in this state may be cancelled nor may the premium for such a policy be increased solely as a result of claims made under the policy which resulted in no loss to the insurer.

(b) The following shall not be treated as a claim made under the policy or used to cancel or increase the premium of a policy or contract of insurance:

(1) A request for policy information; or

(2) A discussion between an insured and an insurer or producer as to whether an event is covered under an insurance policy, provided that the event does not materially increase the risk insured.

(c) This section shall not apply to annuities or workers' compensation, life, disability, accident and health, or long-term care insurance.

(d) Any insurer that violates the provisions of this section shall be subject to the procedure and penalties provided under the Trade Practices Act, § 23-66-201 et seq.

**History.** Acts 2001, No. 302, § 1; 2005, No. 1697, § 4.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-63-111. Policyholder's right to loss information.

(a)(1)(A) Upon written request, each licensed property and casualty insurer shall mail or deliver the policyholder's claim loss information to the policyholder or his or her authorized producer within thirty (30) days from the date of receipt of the request from the policyholder.

(B) If the requested claim loss information is not provided directly to the policyholder, the authorized producer shall mail or deliver the requested claim loss information to the policyholder within seven (7) days from the date of receipt of the claim loss information from the licensed property and casualty insurer.

(2)(A) "Claim loss information" as used in this section means the:

- (i) Date of loss;
- (ii) Property insured; and
- (iii) Amount paid.

(B) "Claim loss information" does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insured's statements, and documents protected by a common law or statutory privilege.

(b) The insurer may charge a reasonable fee for providing the information.

(c) The insurer shall not be required to maintain claim loss information for more than five (5) years following the termination of coverage.

**History.** Acts 2005, No. 1697, § 33; 2009, No. 726, § 11.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Ar-

kansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination



tion of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools

necessary to be an informed and educated consumer of insurance coverage.”

**Amendments.** The 2009 amendment inserted (a)(1)(B), redesignated the remaining text of (a)(1) accordingly, and substituted “from the date of receipt of the request from the policyholder” for “of the request by the policyholder” in (a)(1)(A).

### **23-63-112. Notice of intent to settle.**

(a) An insurer shall provide its insured written notice of the terms of settlement of a claim if the insured:

(1) Notifies the insurer in writing that the amount of or liability for the claim is contested; and

(2) Requests in writing notice of the insurer’s settlement of the claim.

(b) Except as provided in subsection (a) of this section, nothing in this section shall be construed to alter the defense or handling of a claim under any policy or contract of insurance.

(c) The provisions of this section shall not apply to personal lines of insurance.

**History.** Acts 2005, No. 2271, § 1.

### **23-63-113. Agreement required for access to contracting agent’s panel of contracted health care providers or contracted reimbursement rates — Identification of network discounts applicable to provider claims required on subscriber identification cards.**

(a) As used in this section:

(1)(A) “Contracting agent” means an entity that while engaged in selling, leasing, assigning, conveying, or otherwise, grants access to the entity’s panel of contracted health care providers and the entity’s contracted reimbursement rates to another entity.

(B) “Contracting agent” includes, to the extent an entity is engaged in the activities in subdivision (a)(1)(A) of this section and to the full extent permitted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2007:

- (i) Preferred provider organizations;
- (ii) Third-party administrators;
- (iii) Prescription benefit management companies;
- (iv) Insurance companies;
- (v) Health maintenance organizations;
- (vi) Hospital and medical service corporations; and
- (vii) Self-insured health plans;

(2) “Entity” means any physician or other provider of health care services, including institutional providers and organizations or groups of health care providers;

(3)(A) “Health benefit plan” means any individual, blanket, or group plan, policy, or contract for health care services issued or delivered by a health care insurer in this state, including indemnity and managed care plans and governmental plans as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2007.

(B) “Health benefit plan” does not include plans providing health care services under the Workers’ Compensation Law, § 11-9-101 et seq., and the Public Employee Workers’ Compensation Act, § 21-5-601 et seq.;

(4) “Person” means an individual, a corporation, a partnership, a firm, a trust, an association, a voluntary organization, or any other form of business enterprise or legal entity;

(5) “Provider” means any physician or other provider of health care services, including institutional providers, and also organizations or groups of health care providers;

(6) “Provider network” means a preferred provider organization or any other network of providers; and

(7) “Subscriber identification card” or “identification card” means a card that is issued to an individual evidencing his or her coverage under a health benefit plan.

(b)(1) No contracting agent shall sell, lease, assign, convey, or otherwise grant access to the contracting agent’s panel of contracted health care providers or the contracting agent’s contracted reimbursement rates to another entity unless authorized in an agreement between the contracting agent and the provider.

(2) At least annually and upon written request of a contracted provider, a contracting agent shall disclose in writing or electronically to its providers all payors and other entities to which the contracting agent has sold, leased, assigned, conveyed, or otherwise granted access to the contracting agent’s panel of contracted health care providers and the contracting agent’s reimbursement rates.

(c)(1) A subscriber identification card shall state in a clear and legible manner the network applicable to provider claims arising under the subscriber identification card.

(2) A provider network’s contractual discounts or other alternative rates of payments shall be enforceable and binding on all parties only with respect to the network identified under subdivision (c)(1) of this section.

(d) This section does not apply to an insurance company, a health maintenance organization, or any other entity when the insurance company, the health maintenance organization, or the other entity provides health benefits directly through the insurance company’s, the health maintenance organization’s, or the other entity’s own network to the insurance company’s, the health maintenance organization’s, or other entity’s own enrollees without using a contracting agent.

(e) No contracting agent shall retaliate against a provider for exercising rights under this section.

(f) The Insurance Commissioner shall adopt rules for the implementation, administration, and enforcement of this section and shall

enforce this section using the powers granted to the commissioner in the Arkansas Insurance Code.

(g) Nothing in any contract shall supersede this section.

(h)(1) To avoid impairment of existing contracts, this section shall only apply to contracts issued, renewed, or amended after July 31, 2007.

(2) Any provision in a health benefit plan that is executed, delivered, or renewed, or that otherwise contracts for provision of services in this state that is contrary to this subchapter shall be void to the extent of the conflict.

(i) The provisions of this act shall not apply to the Arkansas Comprehensive Health Insurance Pool.

**History.** Acts 2007, No. 686, § 1.

originally enacted by Acts 1959, No. 148.

**A.C.R.C. Notes.** The Arkansas Insurance Code, referred to in this section, was Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-114. Written management and service agreements.**

No domestic insurance carrier, health maintenance organization, farmers' mutual aid association, hospital and medical service corporation, stipulated premium insurer, or fraternal benefit society shall enter into a management or service agreement unless the agreement is in writing.

**History.** Acts 2007, No. 496, § 7.

### **23-63-115. Agreement between insurers and dentists establishing fees for noncovered service prohibited — Definitions.**

(a) As used in this section:

(1) "Dental plan" means a contract, plan, or policy of insurance issued by an insurer that provides for a dental benefit;

(2) "Insurer" means an insurance company, a health maintenance organization, a hospital and medical service corporation, or a self-insured health plan for employees of a governmental entity; and

(3)(A) "Noncovered service" means a service that is not reimbursable under a dental plan.

(B) "Noncovered service" does not include a service that is reimbursable subject to a deductible, waiting period, frequency limitation, annual or lifetime maximum, or other contractual limitation.

(b) An agreement between an insurer and a dentist establishing the fee a dentist may charge for a noncovered service is unenforceable.

**History.** Acts 2011, No. 566, § 1.

## **SUBCHAPTER 2 — AUTHORITY TO DO BUSINESS**

### **SECTION.**

23-63-201. Certificate of authority required — Exceptions.

### **SECTION.**

23-63-202. Certificate of authority — Eligibility generally.



## SECTION.

- 23-63-203. Certificate of authority — Eligibility — Name of insurer.
- 23-63-204. Certificate of authority — Eligibility — Combinations of kinds of insurance.
- 23-63-205. Certificate of authority — Eligibility — Capital funds.
- 23-63-206. Certificate of authority — Deposit of securities required.
- 23-63-207. Certificate of authority — Eligibility — Special surplus.
- 23-63-208. Certificate of authority — Eligibility — Lloyd's plan insurers.
- 23-63-209. Certificate of authority — Application.
- 23-63-210. Certificate of authority — Issuance.

## SECTION.

- 23-63-211. Certificate of authority — Continuance, expiration, amendment, or surrender.
- 23-63-212. Certificate of authority — Mandatory suspension or revocation.
- 23-63-213. Certificate of authority — Suspension or revocation for certain violations.
- 23-63-214. Certificate of authority — Notice of suspension or revocation.
- 23-63-215. Certificate of authority — Period of suspension — Reinstatement.
- 23-63-216. Annual statement and other information.
- 23-63-217. [Repealed.]
- 23-63-218. Change of domicile.

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**Effective Dates.** Acts 1963, No. 153, § 4: July 1, 1963.

Acts 1967, No. 172, § 3: Feb. 28, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the minimum capital or surplus required by insurance companies now doing business in this State, or authorized to do business in this State, are totally inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for adequate protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 539, § 3: Apr. 6, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the minimum capital or surplus required by insurance companies now doing business in this State, or authorized to do business in this State, are totally inadequate for this protection of the public and that the immediate passage of this Act is necessary in order to provide for adequate protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 66, § 12: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 729, § 9: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 789, § 10: Mar. 28, 1977. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from after its passage and approval."

Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 417, § 8: Mar. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws on the regulation of the bail

bond business and bail generally are confusing and have been applied in an inconsistent manner; that there is an urgent need for the revision of laws pertaining to bail and that this Act is immediately necessary to eliminate deficiencies found in the present law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 444, § 26: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current insurance laws of this State as to protection of Arkansas policyholders of insolvent life and disability insurers are inadequate, and that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 723, § 33: Mar. 25, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: "It is hereby



found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act.”

Acts 1993, No. 527, § 20: Mar. 16, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers’ compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 1147, § 1705: Jan. 1, 1994.

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the

protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 65, § 2: Feb. 5, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that, by requiring foreign Lloyd’s plan insurers to maintain trusted assets when other foreign insurers are not subject to that requirement, the insurance licensing laws of this state restrict the ability of foreign Lloyd’s plan insurers to offer insurance policies to consumers within this state and reduce consumer access to available insurance; that the foreign Lloyd’s plan insurers should be held to the same licensing requirements as other foreign insurers and should not be subject to the trusted assets requirement; that these changes are immediately necessary to foster increased competition among licensed insurers in this state and to thereby create greater consumer access to available insurance. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety, shall become effective on: (1) The date of its approval by the Governor; (2) However, if the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the



bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date that last house overrides the veto.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 506, § 15: Jan. 1, 2006, by its own terms.

Acts 2007, No. 429, § 3: Mar. 22, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the failure of state law to permit a waiver of admission requirements based upon evidence of a foreign insurer’s prior successful operations before licensure and failure to permit health maintenance organizations to

be governed by the Insurance Holding Company Regulatory Act hampers the ability of the state to attract additional health plans to base their operations in Arkansas, to promote economic growth, and to enhance consumer choices for health care coverage; that many states apply their insurance holding company laws to a foreign health maintenance organization doing business in the state if the health maintenance organization’s state of domicile does not have substantially similar laws, thus potentially subjecting a health maintenance organization domiciled in Arkansas and licensed in other states to multiple holding company filings and inconsistent approval processes; and that this act is immediately necessary to attract insurers to the state by permitting the waiver of admission requirements when appropriate and the allowance of health maintenance organizations to elect to be subject to the Insurance Holding Company Regulatory Act and thus avoid duplicative and potentially inconsistent regulation in other states. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

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### **23-63-201. Certificate of authority required — Exceptions.**

(a) No person shall act as an insurer and no insurer shall transact insurance in this state unless authorized by a subsisting certificate of authority issued to it by the Insurance Commissioner except as to such transactions as are expressly otherwise provided for in the Arkansas Insurance Code.

(b) A certificate of authority shall not be required of an insurer with respect to the following:

(1) Investigation, settlement, or litigation of claims under its policies lawfully written in Arkansas, or making change of beneficiary or other modifications of an insurance or annuity contract, or otherwise administering insurance or annuity contracts in force, or liquidation of assets

and liabilities of the insurer, other than collection of new premiums, all as resulting from its former authorized operations in Arkansas;

(2) Transactions subsequent to issuance of or relative to a policy covering only subjects of insurance not resident, located, or expressly to be performed in Arkansas at time of issuance, or covering property in course of transportation by land, air, or water to, from, or through Arkansas and including any preparation or storage incidental thereto, and lawfully solicited, written, or delivered outside Arkansas; or

(3) Transactions pursuant to surplus lines coverages lawfully written under § 23-65-101 et seq., the Unauthorized Insurer Process Act, § 23-65-201 et seq., and the Surplus Lines Insurance Law, § 23-65-301 et seq., of the Arkansas Insurance Code.

(c) A foreign insurer may transact business in this state without certificate of authority, for the purpose and to the extent only of investing its funds in Arkansas real estate or securities, by complying with the laws of this state relating to foreign business corporations in general. Such an insurer shall not be subject to any other provisions of the Arkansas Insurance Code.

(d)(1)(A) The commissioner, in his or her reasonable discretion guided by the standards contained in this subsection and consistent with the purposes set forth in this subsection, may issue a special permit to make fixed-dollar life-only annuity agreements with donors to any duly organized domestic or foreign nonstock corporation or association conducted without profit and:

(i) Engaged in active operation for at least five (5) years prior to receiving the permit solely in bona fide charitable, religious, missionary, educational, or philanthropic activities; or

(ii) Not engaged in active operation solely in bona fide charitable, religious, missionary, educational, or philanthropic activities for five (5) years if the commissioner is reasonably satisfied that:

(a) The entity is affiliated with a corporation or association that meets the requirements of subdivision (d)(1)(A)(i) of this section; and

(b) An adequate level of management expertise is readily available to the entity requesting the permit.

(B) The permit shall authorize the corporation or association to receive gifts of money conditioned upon, or in return for, its agreement to pay an annuity to the donor or his or her nominee and to make and carry out the annuity agreement.

(C) Before making an annuity agreement under this subsection, every corporation or association shall file with the commissioner for his or her approval either:

(i) A schedule of its maximum annuity rates that shall be computed on the basis of the annuity standard adopted by it for calculating its reserves; or

(ii) A statement certifying that it adopts and will adhere to the annuity rates as published from time to time by the American Council on Gift Annuities or its successor until the corporation or association advises the commissioner to the contrary in writing and files a schedule of its new proposed maximum annuity rates for approval.



(D) Filings and approvals required under this subsection shall be subject to the provisions of §§ 23-79-109 and 23-79-110.

(2) Upon entering an annuity agreement, a domestic corporation or association shall establish and maintain liabilities with respect to the annuity by one (1) of the following methods, using an amount:

(A) Not less than the present value of future benefits payable to the donor as determined by the most recent method established by the Internal Revenue Service;

(B) Determined by applying the method established for annuities under the Standard Valuation Law for Life Insurance and Annuities, § 23-84-101 et seq.; or

(C) Equal to the aggregate values determined at the dates of contribution of all assets received from donors with respect to annuities for annuitants who are then living.

(3)(A) Unless otherwise permitted by the commissioner, each corporation or association shall maintain a segregated account or accounts for its charitable gift annuities.

(B) The segregated account or accounts shall be used solely to pay the charitable gift annuity obligations of the corporation or association.

(C) If the commissioner finds the reserve established by a permittee inadequate at any time, the commissioner shall order the permittee to increase its reserve accordingly, or the commissioner may stipulate the reserving method for the permittee to rectify the reserve deficiency.

(4) Each corporation or association, except those identified in subdivision (d)(5) of this section, shall maintain net admitted assets at least equal to the greater of:

(A) The sum of its reserves on its outstanding agreements, all other liabilities, and a surplus of at least ten percent (10%) of the reserves; or

(B) The amount of fifty thousand dollars (\$50,000).

(5) Each domestic corporation or association maintaining reserves in the manner described in subdivision (d)(2)(C) of this section shall maintain net admitted assets at least equal to the amount of the reserves plus all other outstanding liabilities.

(6) In determining reserves, a deduction shall be made for all or any portion of an annuity risk that is reinsured by a life insurance company authorized to do business in this state.

(7) The required admitted assets shall be invested:

(A) Only in securities permitted by §§ 23-63-801 — 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840; or

(B) In accordance with the prudent investor rule stated in §§ 24-2-610 — 24-2-619.

(8) No corporation or association organized under the laws of another state shall be permitted to make annuity agreements in this state unless it complies with all requirements of this subsection imposed upon domestic corporations or associations, except that a corporation or



association organized under the laws of another state may invest its reserves and surplus funds in securities permitted by the laws of its state of domicile.

(9)(A) No corporation or association shall make or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this subsection.

(B) If after notice and hearing the commissioner finds that a corporation or association having a permit has failed to comply with the requirements of this subsection, the commissioner may revoke or suspend the permit or order the permittee to cease making new annuity contracts until it complies.

(C)(i) All corporations or associations operating under this subsection shall file an annual financial statement of their operations and accounts and schedule of outstanding annuities with applicable reserves within one hundred eighty (180) days of the end of their fiscal year.

(ii) The report shall be prepared by a certified public accountant in accordance with generally accepted accounting principles detailing the financial condition and status of the corporation or association as of the conclusion of its most recent fiscal year.

(iii) Each domestic corporation or association investing assets in the manner described in subdivision (d)(7)(B) of this section shall file with the annual report:

(a) A description of the organization's investment philosophy for charitable gift annuities and how the investments of the company are designed to meet future charitable gift annuity obligations;

(b) A report from the organization identifying the members of the investment committee charged with making investment decisions regarding charitable gift annuity assets, including a description of each committee member's investment expertise; and

(c) A certification of the board of directors of the corporation or association that attests that its investments and investment transactions match the organization's philosophy and meet the standards of the prudent investor rule stated in §§ 24-2-610 — 24-2-619.

(10) The commissioner may promulgate any rules and regulations the commissioner considers necessary or desirable to implement the provisions of this subsection.

(e)(1) The commissioner shall promulgate rules to allow a city, town, municipality, or county of this state acting independently or in any combination pursuant to an interlocal cooperation agreement under the Interlocal Cooperation Act, § 25-20-101 et seq., to obtain a charitable annuity permit for the purpose of establishing a charitable annuity program.

(2)(A) The charitable annuity program shall permit any person or an entity to make voluntary and charitable donations to benefit the bona fide charitable, educational, and philanthropic programs, including without limitation libraries, museums, and governmentally owned hospitals, of a city, town, municipality, or county acting alone or

pursuant to an interlocal cooperation agreement under the Interlocal Cooperation Act, § 25-20-101 et seq.

(B) The charitable donation may be made to assist the establishment or maintenance of streets, parks, children's playgrounds, libraries, museums, beautification projects, or any other charitable, educational, or philanthropic purpose of a city, town, municipality, or county.

(3) The charitable annuity permit shall authorize the city, town, municipality, or county acting alone or pursuant to an interlocal cooperation agreement under the Interlocal Cooperation Act, § 25-20-101 et seq., to receive unconditional gifts of money and property and to receive gifts of money and property conditioned upon paying an annuity to the donor or the donor's nominee.

(4) The rules of the commissioner to implement this subsection shall provide without limitation:

(A) That the city, town, municipality, or county acting alone or pursuant to an interlocal cooperation agreement under the Interlocal Cooperation Act, § 25-20-101 et seq., has been actively involved in the operation of the public charitable, educational, or philanthropic activity for at least five (5) years prior to the issuance of the permit;

(B) For the investment of the assets and maintenance of the liabilities and surplus of the charitable annuity program appropriate to funding the annuities;

(C) That separate accounts be maintained solely for the benefit of annuity contract owners;

(D) The prior approval of annuity contract forms and annuity rates by the commissioner; and

(E) Annual financial reporting of a charitable annuity program of a city, town, municipality, or county acting alone or pursuant to an interlocal cooperation agreement under the Interlocal Cooperation Act, § 25-20-101 et seq., that has been granted a charitable annuity permit under this subsection.

(f) The commissioner may punish a person that fails to meet the requirements of subsection (d) or subsection (e) of this section by:

(1) Imposing a penalty of up to ten thousand dollars (\$10,000); or

(2) Suspending or revoking the charitable annuity permit and authority to operate under subsection (d) or subsection (e) of this section.

**History.** Acts 1959, No. 148, §§ 43-45; A.S.A. 1947, §§ 66-2201 — 66-2203; Acts 1993, No. 1147, § 1806; 2003, No. 1099, § 1; 2005, No. 905, § 1; 2007, No. 496, § 8; 2009, No. 726, §§ 12 — 16.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 1147, § 1806, subsection (d) also provided: "This subsection (d) is added to provide a formalized system whereby established not-for-profit corporations and foundations may, for purposes consistent with their charitable charge,

grant or issue annuities upon an agreed basis with charitable donors. It is for the further purpose of providing assurance that not-for-profit corporations or associations indulging in this type of insurance activity maintain at least minimal reserves to assure charitable donors that the income stream for which they bargained is, in fact, available to them."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No.



148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

Acts 1993, No. 1147, § 1809, provided: "All laws and parts of laws in conflict with this act are hereby repealed."

**Amendments.** The 2007 amendment added (e).

The 2009 amendment, in (d), rewrote (d)(2), substituted "(d)(2)(C)" for

"(d)(2)(B)" in (d)(5), deleted (d)(7)(B) and redesignated the remaining subdivisions, and substituted "one hundred eighty (180)" for "ninety (90)" in (d)(9)(C)(i); added (f); and made minor stylistic changes.

## **23-63-202. Certificate of authority — Eligibility generally.**

To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with the Arkansas Insurance Code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, all of the same general type as may be formed as a domestic insurer under the Arkansas Insurance Code, except that:

(1) No foreign insurer shall be authorized to transact insurance in Arkansas which:

(A) Unless waived by the Insurance Commissioner, has not furnished the commissioner with evidence that it has been organized and actively engaged in the insurance business in the state of its incorporation for a period of three (3) years prior to the date of its application to be admitted and authorized to do business in the State of Arkansas. However, this subdivision (1)(A) shall not apply to a foreign insurance company which is:

(i) The wholly owned subsidiary of an insurance company admitted and authorized to do business in the State of Arkansas; or

(ii) The continuing corporation resulting from a merger or consolidation of insurance companies, at least one (1) of which has been organized and actively engaged in the insurance business in the state of its organization for at least three (3) years prior to the date of the application of the corporation to be admitted and authorized to do business in the State of Arkansas; and

(B) Does not maintain reserves as required by § 23-63-601 et seq., which:

(i) Refers to assets and liabilities applicable to the kinds of insurance transacted by the insurer wherever transacted in the United States;

(ii) If a mutual life insurer, issues policies under which the policyholder is subject to contingent liability or assessment; or

(iii) Transacts insurance on the assessment premium plan, stipulated premium plan, cooperative plan, or any similar plan, except that the commissioner may renew the certificate of authority of any foreign insurer lawfully transacting insurance in Arkansas on any plan under its certificate of authority immediately prior to January 1, 1960, so long as the insurer is otherwise in compliance with the applicable provisions of the Arkansas Insurance Code.

(2) No certificate of authority or license to transact any kind of insurance business shall be issued, renewed, or continued in effect to



any insurer which is owned or controlled, in whole or in substantial part, by any state of the United States, or by a foreign government, or by any political subdivision, instrumentality, or agency of either, unless the insurer was so owned, controlled, or constituted and was authorized to transact insurance in this state, prior to March 3, 1959.

(3) Foreign Lloyd's plan insurers may be authorized to transact insurance in this state as provided in § 23-63-208.

**History.** Acts 1959, No. 148, § 46; 1967, No. 432, § 1; A.S.A. 1947, § 66-2204; Acts 2001, No. 1566, § 1; 2007, No. 429, § 1.

**Publisher's Notes.** The Arkansas Insurance Code referred to in this section was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2007 amendment, in (1)(A), substituted "Unless waived by the Insurance Commissioner, has not furnished the commissioner with" for "Has not furnished the Insurance Commissioner with" at the beginning.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-63-203. Certificate of authority — Eligibility — Name of insurer.

(a) No insurer shall be authorized by original certificate of authority to transact insurance in this state which has or uses a name so similar to that of another insurer already so authorized as likely to mislead the public.

(b) No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding ten (10) years if life insurance policies originally issued by the other insurer are still outstanding in this state.

(c) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

(d) In case of conflict of names hereafter between two (2) insurers, or a conflict otherwise prohibited under subsections (a)-(c) of this section, the Insurance Commissioner may permit or require as a condition to the issuance of an original certificate of authority to an applicant insurer that the insurer shall use in Arkansas such supplementation or modification of its name or such business name as may reasonably be necessary to avoid conflict. No name, supplementation, or modification shall contain the principal identifying factor contained in the name of any other insurer already authorized to transact insurance in this state.

**History.** Acts 1959, No. 148, § 47; A.S.A. 1947, § 66-2205.

**23-63-204. Certificate of authority — Eligibility — Combinations of kinds of insurance.**

An insurer which otherwise qualifies therefor may be authorized to transact any one (1) kind or combination of kinds of insurance, as defined in §§ 23-62-101 — 23-62-108, except:

- (1) A life insurer shall be authorized to transact in addition only accident and health insurance. However, the Insurance Commissioner shall continue to so authorize any life insurer otherwise qualified that, immediately prior to January 1, 1960, was lawfully authorized to transact in this state kinds of insurance in addition to life and accident and health;
- (2) A reciprocal insurer shall not transact life insurance; and
- (3) A title insurer shall be a stock insurer.

**History.** Acts 1959, No. 148, § 48; A.S.A. 1947, § 66-2206; Acts 2001, No. 1603, § 8.

**23-63-205. Certificate of authority — Eligibility — Capital funds.**

(a)(1) On and after January 1, 2006, to qualify for and maintain authority to transact any one (1) kind of insurance, as defined in §§ 23-62-101 — 23-62-108, or combination of kinds of insurance as shown in this subsection, an insurer applying for its original certificate of authority in Arkansas shall possess and maintain in cash and marketable securities unimpaired paid-in capital if the insurer is a domestic, foreign, or alien stock insurer or surplus if the insurer is a domestic, foreign, or alien mutual, or domestic mutual legal reserve life insurer, or foreign or alien reciprocal insurer, in an amount not less than is applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as are required under § 23-63-207:

Kinds of Insurance	Minimum Capital or Surplus Required
Life . . . . .	\$750,000
Accident and Health . . . . .	750,000
Life and Accident and Health . . . . .	750,000
Property . . . . .	500,000
Casualty . . . . .	750,000
Surety . . . . .	750,000
Marine . . . . .	500,000
Title . . . . .	250,000
Mortgage Guaranty . . . . .	750,000
Property, Casualty, Surety, and Marine . . . . .	750,000
Combination of other lines . . . . .	750,000

(2)(A) As to any combination of kinds of insurance, other than combinations of kinds of insurance specifically listed in this subsection,

the insurer shall possess the sum of the minimum capital or surplus required by this subsection for the separate kinds of insurance it proposes to transact unless the Insurance Commissioner deems it sufficient for the applicant to possess and maintain the total amount of seven hundred fifty thousand dollars (\$750,000) for the proposed combination of kinds of insurance.

(B) If Arkansas law does not specify the minimum capital or surplus for any kind of insurance, then the commissioner shall establish a minimum capital or surplus requirement of not less than five hundred thousand dollars (\$500,000).

(3) The commissioner may require reinsurance on terms and in amounts as are reasonable under the circumstances for abstractor's professional liability insurance when written by title insurers.

(4) In his or her discretion, the commissioner may require the insurer to possess and maintain additional capital, if a stock insurer, and surplus, if a mutual or reciprocal insurer, in addition to that required by this section, based on the financial condition of the insurer or based on the types, volume, or nature of the business transacted by the insurer.

(b) An insurer holding a valid certificate of authority to transact insurance in this state immediately prior to January 1, 2006, may continue to be authorized to transact the same kinds of insurance as permitted by the certificate of authority by maintaining thereafter the same amount of paid-in capital stock, if the insurer is a stock insurer, or the amount of surplus, if the insurer is a mutual or reciprocal insurer, as required by the laws of this state for such an insurer immediately prior to January 1, 2006. However, the insurer shall not be granted authority to transact any other or additional kind of insurance, unless it then fully complies with the requirement as to capital and surplus, as applied to the kinds of insurance it then proposes to transact, as provided by this section with respect to insurers applying for original certificates of authority.

(c) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or currently to be transacted by the insurer in all areas in which it operates, whether or not only a portion of the kinds are to be transacted in this state.

(d) As to surplus required for qualification to transact one (1) or more kinds of insurance and to be maintained, domestic mutual insurers, other than mutual life insurers, shall be governed by §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, and domestic reciprocal insurers shall be governed by § 23-70-101 et seq.

(e) A life insurer may also grant annuities without additional capital or additional surplus.

(f) A casualty insurer may be authorized to transact accident and health insurance without additional capital or additional surplus.

(g)(1) Except as provided in subdivision (g)(2) of this section:

(A) A title insurer shall not be approved to write any other kind of insurance other than title insurance; and



(B) A mortgage guaranty insurer shall not be approved to write any other kinds of insurance other than mortgage guaranty insurance.

(2) The provisions of this subsection shall not apply to an insurer authorized to write title or mortgage guaranty insurance along with other kinds of insurance as of January 1, 2006, but the insurer shall not be allowed to add additional kinds of insurance to its certificates of authority after January 1, 2006.

**History.** Acts 1959, No. 148, § 49; 456, § 4; 1991, No. 723, § 16; 2001, No. 1967, No. 172, § 1; 1971, No. 539, § 1; 1603, § 9; 2001, No. 1604, §§ 17, 18; 1975, No. 729, § 1; 1979, No. 942, § 7; 2005, No. 506, § 15.  
1981, No. 451, § 1; 1985, No. 744, § 1; **Cross References.** Corporate franchise tax, § 26-54-101 et seq.  
A.S.A. 1947, § 66-2207; Acts 1987, No.

### **23-63-206. Certificate of authority — Deposit of securities required.**

(a) All insurers authorized to transact insurance in this state shall make and maintain a deposit of securities as follows:

(1)(A)(i) All insurers authorized to transact only life or accident and health insurance, or both, shall deposit through the Insurance Commissioner and subject to the conditions specified in § 23-63-909 securities eligible for deposit under § 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and the prompt payment of all claims arising and accruing to any person in this state.

(ii)(a) On and after January 1, 2002, the provisions of subdivision (a)(1)(A)(i) of this section shall apply only to domestic insurers licensed or hereafter licensed.

(b) Foreign and alien insurers licensed or hereafter licensed shall be exempt upon filing evidence with the commissioner of a satisfactory deposit for continued licensure in the state of domicile, Canada, Mexico, or a port-of-entry state.

(B) On and after January 1, 2002, licensed foreign and alien insurers may apply for release of an Arkansas deposit upon filing of evidence of a satisfactory deposit in the state or country of domicile;

(2)(A)(i) Insurers applying for an original certificate of authority in Arkansas for kinds of insurance other than life, accident and health, surety, or any combination thereof, and insurers holding a valid certificate of authority who thereafter apply to transact any other or additional kinds of insurance, excluding life, accident and health, surety, or any combination thereof, shall deposit through the commissioner and subject to the conditions specified in § 23-63-909 securities eligible for deposit under § 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and the prompt payment of all claims arising and accruing to any person in this state.

(ii)(a) On and after January 1, 2002, the provisions of subdivision (a)(2)(A)(i) of this section shall apply only to domestic insurers licensed or hereafter licensed.

(b) Foreign and alien insurers licensed or hereafter licensed shall be exempt upon filing evidence with the commissioner of a satisfactory deposit for continued licensure in the state of domicile, Canada, Mexico, or a port-of-entry state.

(B) On and after January 1, 2002, licensed foreign and alien insurers may apply for release of an Arkansas deposit upon filing of evidence of a satisfactory deposit in the state or country of domicile; (3)(A) An insurer authorized to transact solely surety insurance in this state shall deposit through the commissioner and subject to the conditions provided in § 23-63-909 securities eligible for deposit under § 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and prompt payment of policyholders and creditors of the insurer in this state and prompt payment of all claims arising and accruing to any obligee in this state.

(B) All insurers authorized to transact the lines or classes of insurance under subdivision (a)(2) of this section or any combination thereof may also be authorized to transact surety insurance by depositing in accordance with this subsection additional securities with a market value of fifty thousand dollars (\$50,000).

(C) Any authorized surety insurer also licensed as a professional bail bond company shall make and maintain an additional deposit, as required in § 17-19-101 et seq., applicable to bail bond transactions.

(D)(i)(a) On and after January 1, 2002, the provisions of this subdivision (a)(3) shall apply only to domestic insurers licensed or hereafter licensed.

(b) Foreign and alien insurers licensed or hereafter licensed shall be exempt upon filing evidence with the commissioner of a satisfactory deposit for continued licensure in the state of domicile, Canada, Mexico, or a port-of-entry state.

(ii) On and after January 1, 2002, licensed foreign and alien insurers may apply for release of an Arkansas deposit upon filing of evidence of a satisfactory deposit in the state or country of domicile.

(b) All deposits made through the commissioner and held in this state shall be subject to the applicable provisions of § 23-63-901 et seq., which refer to the administration of deposits.

(c)(1) The application of a foreign or alien insurer to obtain a release of deposited assets under this section shall demonstrate by special filing the adequacy and sufficiency of the deposit in the state of domicile, Canada, Mexico, or port-of-entry state for continued Arkansas licensure.

(2) Applicants shall:

(A)(i) Agree to maintain deposits at all times adequate to cover Arkansas deposit obligations.

(ii) The deposits shall be certificate of authority lines of insurance in this state as reflected on the uniform certificate of authority application; and

(B) File with the commissioner an updated certificate of deposit issued by the insurance regulator in the state of domicile, Canada, Mexico, or port-of-entry state.

**History.** Acts 1959, No. 148, § 51; 1963, No. 153, § 1; 1983, No. 522, § 1; A.S.A. 1947, § 66-2209; Acts 1987, No. 456, § 5; 1987, No. 561, §§ 1, 2; 1989, No. 417, § 7; 1989, No. 444, §§ 21, 22; 1989, No. 772, § 24; 1999, No. 645, § 1; 2001, No. 1604, § 19; 2005, No. 506, § 16.

**A.C.R.C. Notes.** As originally amended by Acts 1989, No. 772, subdivision (a)(3) began: "On or after the effective date of this act."

**Publisher's Notes.** The reference to the code section in Title 17 has been updated to reflect the 1995 realphabetization of the chapters in that title.

Acts 1983, No. 522, § 51, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

## CASE NOTES

### ANALYSIS

Bonds.

Compliance with Section.

Payment of Creditors.

Substitution of Deposit for Bond.

### Bonds.

Under a bond allowed to be filed under former similar section, the company was liable for all claims accruing during the term of the bond, whether issued during the term or not. *Crawford v. Ozark Ins. Co.*, 97 Ark. 549, 134 S.W. 951 (1911) (decision under prior law).

Where a bond was required to be executed by sureties for an insurance company, unless it will be doing violence to the bond itself, it will be presumed that the sureties intended to execute the bond in compliance with the statutory requirements. *Crawford v. Ozark Ins. Co.*, 97 Ark. 549, 134 S.W. 951 (1911) (decision under prior law).

### Compliance with Section.

Failure of foreign company to comply with former similar section did not invali-

date insurance policy. *Ehrman v. Teutonia Ins. Co.*, 1 F. 471 (E.D. Ark. 1880) (decision under prior law).

### Payment of Creditors.

The deposit provided in this section is a special deposit as defined in § 23-68-102 from which Arkansas creditors are entitled to be paid pro rata; and if creditor is not paid in full from the special deposit, then for the unpaid balance, creditor will participate in the other assets of the corporation in the general liquidation. *Combs v. Haddock*, 241 Ark. 596, 408 S.W.2d 861 (1966).

### Substitution of Deposit for Bond.

A casualty company may file either a qualifying bond or a certificate of deposit of securities, but having filed a bond, it has no authority to withdraw it and substitute a certificate of deposit. *New Amsterdam Cas. Co. v. Squires*, 189 Ark. 79, 70 S.W.2d 847 (1934) (decision under prior law).

## 23-63-207. Certificate of authority — Eligibility — Special surplus.

(a) In addition to the minimum paid-in capital stock if stock insurers, or minimum surplus if mutual and reciprocal insurers, required by



§ 23-63-205, special surplus shall be possessed by insurers hereafter applying for original certificates of authority in this state as follows:

(1) All domestic stock insurers and domestic mutual legal reserve life and domestic reciprocal insurers, when first authorized to transact insurance in this state, shall have, if a stock insurer, surplus, or, if a mutual or reciprocal insurer, additional surplus, equal to not less than one hundred percent (100%) of the minimum paid-in capital stock or minimum surplus otherwise required under § 23-63-205 for the kinds of insurance to be transacted;

(2) Foreign and alien insurers that have actively transacted insurance as authorized insurers in one (1) or more states of the United States shall possess, when first authorized in this state, surplus or additional surplus equal to not less than one hundred percent (100%) of the minimum paid-in capital stock if a stock insurer, or minimum surplus if a mutual or reciprocal insurer, otherwise required under § 23-63-205.

(b) As to all insurers referred to in subdivisions (a)(1) and (2) of this section, and as to currently authorized insurers seeking additional authority in this state, if, after issuance of its original certificate of authority to transact insurance in this state, the insurer requests authority to transact additional kinds of insurance, the request shall not be authorized unless the insurer then possesses special surplus or additional surplus in such an amount as would be required under this section as for an original certificate of authority covering the kinds of insurance the insurer then proposes to transact.

(c) On and after January 1, 1996, as to all domestic stock and domestic mutual and domestic reciprocal insurers currently licensed or obtaining original licensure on and after January 1, 1996, the insurer shall maintain a minimum special surplus of not less than fifteen percent (15%) of the paid-in capital, if a stock insurer, or fifteen percent (15%) of surplus, if a mutual or reciprocal insurer, as reported in its last preceding annual statement. The Insurance Commissioner in his or her discretion may allow domestic insurers to augment special surplus in increments over a period of up to five (5) years to achieve compliance with the minimum amounts required herein, if immediate compliance with this subsection would cause the domestic insurer to be impaired or insolvent.

(d) In his or her discretion, the commissioner may require an insurer applying for its original certificate of authority to possess and maintain additional special surplus, in addition to that required by this subchapter, based on the financial condition of the insurer or the types, volume, or nature of the business transacted by the insurer.

**History.** Acts 1959, No. 148, § 50; 1973, No. 66, § 2; 1975, No. 729, § 2; 1979, No. 942, § 8; A.S.A. 1947, § 66-2208; Acts 1993, No. 901, § 7; 1995, No. 1272, § 10; 2001, No. 1604, §§ 20, 21.

**A.C.R.C. Notes.** As originally amended

by Acts 1993, No. 901, § 7, subsection (c) began: "For the period commencing upon the effective date of this Act until April 1, 1994, as to all insurers referred to in subdivisions (a)(1) and (a)(2) of this section, after issuance of its original certifi-

cate of authority, the insurer shall maintain minimum surplus of not less than fifteen percent (15%) of the original capital, if a stock insurer, or original surplus, if a mutual or reciprocal insurer, as required under 23-63-205 to qualify as an authorized insurer. (2) Commencing on and after April 1, 1994....”

Acts 1995, No. 1272, § 11, provided: “COMPLIANCE WITH SURPLUS AMOUNTS. Insurers should be granted

sufficient preparation time to allow them to increase their new additional surplus to the required minimum, and accordingly insurers’ compliance with the provisions of this Act as to minimum special surplus required in addition to minimum capital and surplus shall not be required until on and after January 1, 1996 pursuant to Arkansas Code 23-63-207(c), as amended by this act.”

### **23-63-208. Certificate of authority — Eligibility — Lloyd’s plan insurers.**

(a) Foreign Lloyd’s plan insurers that held certificates of authority to transact insurance in this state immediately prior to January 1, 1960, may continue to be so authorized while maintaining surplus as required under § 23-63-205(b) of foreign mutual insurers transacting like kinds of insurance and while otherwise in compliance with the Arkansas Insurance Code.

(b)(1) Any other foreign or alien Lloyd’s plan insurer may hereafter be authorized to transact in this state any or all kinds of insurance other than life, title, or surety insurance while otherwise in compliance with the Arkansas Insurance Code.

(2) However, alien Lloyd’s plan insurers may only be authorized to transact insurance in this state under subdivision (b)(1) of this section if the alien Lloyd’s plan insurer maintains trustee assets within the United States for the protection of its United States policyholders or policyholders and creditors, under trust arrangements and with a trust institution satisfactory to the Insurance Commissioner, of not less than five million dollars (\$5,000,000), and of which at least one million dollars (\$1,000,000) represents an excess of such assets over the liabilities of the alien insurer as to its insurance transactions in the United States.

**History.** Acts 1959, No. 148, § 52; A.S.A. 1947, § 66-2210; Acts 2003, No. 65, § 1.

**Publisher’s Notes.** The Arkansas In-

surance Code referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-209. Certificate of authority — Application.**

(a) To apply for an original certificate of authority, an insurer shall file with the Insurance Commissioner its application therefor, accompanied by the applicable fees as specified in § 23-61-401, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, state or country of domicile, and such additional information as the commissioner may reasonably require together with, but not limited to, the following documents, as applicable:



(1) A copy of its corporate charter or articles of incorporation with all amendments thereto, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) If a mutual insurer, a copy of its bylaws, as amended, certified by its secretary or other officer having custody thereof;

(3) If a foreign reciprocal insurer, copies of the power of attorney of its attorney in fact and, if a separate instrument, its subscribers' agreement, certified by its attorney in fact; and if a domestic reciprocal insurer, the declaration provided for by § 23-70-106;

(4) A copy of its financial statement as of December 31, next preceding, sworn to by at least two (2) executive officers of the insurer or certified by the public insurance supervisory officials of the insurer's state of domicile or of entry into the United States. The insurer may use the form of statement currently approved by the National Association of Insurance Commissioners or its successor organization;

(5) A copy of the report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) On and after January 1, 2003, registration of registered agents for service of process to be made pursuant to § 23-63-301 et seq.;

(7) If a foreign insurer, a certificate of the public official having supervision of insurance in its state or country of domicile showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) Any bond, deposit, or evidence of deposit in another state, as required under § 23-63-206;

(10) Specimen copies of policies proposed to be offered in this state; and

(11) A detailed digest of the company history evidencing successful operation, with reference to insurance in force, claims record, and such other data as the commissioner may request.

(b) Before granting a certificate of authority to an insurance company, the commissioner shall be satisfied, by such examination as he or she deems necessary to make and by review of such evidence as he or she deems necessary to require, that the company is qualified under the laws of this state to transact business in this state. The costs of any examinations will be reimbursed pursuant to § 23-61-206.

**History.** Acts 1959, No. 148, § 53; 2211; Acts 1987, No. 456, § 6; 2001, No. 1969, No. 322, § 1; A.S.A. 1947, § 66- 1604, § 22.

### **23-63-210. Certificate of authority — Issuance.**

(a) The certificate of authority, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Arkansas. At the insurer's request, the Insurance Commissioner may issue a certifi-



cate of authority limited to particular types of insurance or insurance coverage within the scope of a kind of insurance as defined in §§ 23-62-101 et seq., 23-62-201, 23-62-202, 23-62-204, 23-62-205, and 23-63-701.

(b) Although issued to the insurer, the certificate of authority is at all times the property of the State of Arkansas. Upon any expiration, suspension, or termination of the certificate, the insurer shall promptly deliver the certificate of authority to the commissioner.

**History.** Acts 1959, No. 148, § 54; A.S.A. 1947, § 66-2212; Acts 1987, No. 456, § 7.

### **23-63-211. Certificate of authority — Continuance, expiration, amendment, or surrender.**

(a) Certificates of authority issued or renewed under the Arkansas Insurance Code shall continue in force as long as the insurer is entitled thereto under the Arkansas Insurance Code and until suspended, revoked, or otherwise terminated. However, they are subject to continuance of the certificate by the insurer each year by:

(1) Payment prior to April 15 of the continuation fee provided in § 23-61-401;

(2) Due filing by the insurer of its annual statement for the calendar year preceding as required under § 23-63-216; and

(3) Payment by the insurer of applicable taxes, fees, and assessments, as well as timely filing of supporting annual and quarterly statements and other required filings with respect to the preceding calendar year, as required under the Arkansas Insurance Code.

(b)(1) If not so continued by the insurer, its certificate of authority shall expire as of midnight on the April 30 next following the failure of the insurer so to continue it in force.

(2) If for any reason the insurer is not entitled to continuation of its certificate of authority, the Insurance Commissioner may refuse to continue the certificate, and the certificate of authority shall expire as stated in this subsection.

(3) The commissioner shall promptly notify the insurer of the occurrence of any failure or condition resulting in impending expiration of its certificate of authority.

(c) The commissioner may, in his or her discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and upon payment by the insurer of the fee for reinstatement in the amount provided in § 23-61-401. Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(d) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter or insuring powers.

(e) Any insurer desiring to surrender its certificate of authority, withdraw from this state, or discontinue the writing of certain classes of insurance in this state shall give ninety (90) days' notice in writing to the State Insurance Department and shall state in writing its reasons for such action. The commissioner may waive any part of the notice requirement.

**History.** Acts 1959, No. 148, § 55; 1985, No. 804, § 7; A.S.A. 1947, § 66-2213; Acts 2001, No. 1604, § 23.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

### 23-63-212. Certificate of authority — Mandatory suspension or revocation.

(a) The Insurance Commissioner shall suspend or revoke an insurer's certificate of authority:

(1) If the action is required by any provision of the Arkansas Insurance Code; or

(2) If the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(3) If the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(b)(1) Except in cases of insolvency or impairment of required capital or surplus, or suspension or revocation by another state as referred to in subdivision (a)(3) of this section, the commissioner shall give the insurer at least ten (10) days' written notice in advance of any suspension or revocation under this section.

(2) If the insurer requests a hearing thereon within the ten (10) days, the request shall automatically stay the commissioner's proposed action until his or her order is made on the hearing.

**History.** Acts 1959, No. 148, § 56; A.S.A. 1947, § 66-2214.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**23-63-213. Certificate of authority — Suspension or revocation for certain violations.**

(a) The Insurance Commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he or she finds that the insurer:

(1)(A) Is in unsound condition, or is in such condition or is using such methods and practices in the conduct of its business, as to render its further transaction of insurance in Arkansas hazardous or injurious to its policyholders or to the public.

(B) For the purposes of this section, the commissioner may consider, among other factors, the present, past, and future trends in the financial condition of the insurer that could affect the solvency of the insurer;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(3) Has failed to pay any final judgment rendered against it within thirty (30) days;

(4) Is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Arkansas without having a certificate of authority therefor, except as permitted as to surplus lines insurers under § 23-65-101 et seq.; or

(5) Has knowingly, or with reckless disregard of same, violated or failed to comply with any applicable provision of the Arkansas Insurance Code, or with any lawful rule, regulation, or order of the commissioner.

(b) In his or her discretion and without advance notice or a hearing thereon, the commissioner may immediately suspend the certificate of authority of any foreign insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state by the authorized official of the domiciliary state of the insurer.

(c) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any certificate of authority, the commissioner may in his or her discretion:

(1) In lieu of suspension, impose upon the holder of the certificate of authority an administrative penalty in the amount of five thousand dollars (\$5,000); or

(2) In lieu of revocation, impose upon the holder of the certificate of authority an administrative penalty in the amount of ten thousand dollars (\$10,000).

**History.** Acts 1959, No. 148, § 57; A.S.A. 1947, § 66-2215; Acts 1993, No. 1973, No. 66, § 3; 1977, No. 789, § 2; 901, § 8; 2001, No. 1604, § 24.



**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-214. Certificate of authority — Notice of suspension or revocation.**

(a) Suspension or revocation of an insurer's certificate of authority shall be by the Insurance Commissioner's order given to the insurer as provided by § 23-61-109.

(b) The commissioner shall promptly also give notice of the suspension or revocation to the insurer's agents in this state of record in the commissioner's office.

(c) The insurer shall not solicit or write any new business in this state during the period of any suspension or revocation. Provided, however, the insurer shall be allowed to renew and service existing policies and contracts during the period of any suspension, unless limited by the commissioner by his or her order or by court order.

**History.** Acts 1959, No. 148, § 58; A.S.A. 1947, § 66-2216; Acts 2001, No. 1604, § 25.

### **23-63-215. Certificate of authority — Period of suspension — Reinstatement.**

(a) The suspension of an insurer's certificate of authority is indefinite unless:

(1) A specific period is fixed by the Insurance Commissioner in the order of suspension; or

(2) The commissioner shortens or rescinds the suspension.

(b)(1) Unless in the order of suspension the commissioner waives payment of any fees, licenses, and taxes during the suspension, the insurer shall file its annual statement and pay fees, licenses, and taxes during the suspension as required under the Arkansas Insurance Code as if the certificate of authority had continued in full force.

(2) Upon reinstatement of a suspended insurer's certificate of authority, all fees, licenses, and taxes accumulated during the suspension are immediately due and payable.

(c)(1) If a suspension ends within the period a certificate of authority has not otherwise terminated, the certificate of authority shall automatically reinstate unless the commissioner finds that:

(A) The causes of the suspension have not been removed; or

(B) The insurer is not in compliance with the Arkansas Insurance Code.

(2) If the commissioner finds that the certificate of authority does not automatically reinstate, the commissioner shall provide written notice and give the insurer thirty (30) days to remove the cause for suspension or otherwise comply with the Arkansas Insurance Code.

(3) If the certificate of authority is not automatically reinstated, the certificate of authority shall be deemed to have expired upon the earliest of:

(A) Thirty (30) days after the commissioner gives notice under subdivision (c)(2) of this section; or

(B) The failure of the insurer to continue the certificate of authority during the suspension.

(d) Upon reinstatement of the insurer's certificate of authority:

(1) The authority of the insurer's agents in this state to represent the insurer is reinstated; and

(2) The commissioner shall promptly notify the insurer and its agents in this state of the reinstatement.

**History.** Acts 1959, No. 148, § 59; A.S.A. 1947, § 66-2217; Acts 2005, No. 506, § 17; 2009, No. 726, § 17.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2009 amendment rewrote the section.

### **23-63-216. Annual statement and other information.**

(a)(1) Annually on or before March 1 or within an extension of time that the Insurance Commissioner for good cause may have granted, each authorized insurer shall file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding.

(2) The statement shall be the appropriate and most recent National Association of Insurance Commissioners':

(A) "Annual Statement Blank For Life And Accident And Health";

(B) "Property And Casualty Annual Statement Blank";

(C) "Title Insurance Annual Statement Blank";

(D) "Annual Statement Blank for Health" for use by hospital, medical, and dental service or indemnity corporations;

(E) "Fraternal Annual Statement Blank";

(F) "Annual Statement Blank for Health" for health insurers or health maintenance organizations and others; or

(G) Other National Association of Insurance Commissioners' convention blank as appropriate.

(3) The statement shall be prepared in accordance with the most recent and appropriate companion National Association of Insurance Commissioners' "Annual and Quarterly Statement Instructions" and follow those accounting practices and procedures prescribed by the most recent and appropriate companion National Association of Insurance Commissioners' Accounting Practices and Procedures Manual.

(4) Arkansas domestic insurers shall file the statement with the commissioner in hard-copy format.

(5) Each authorized insurer shall file an audited financial statement on or before June 1 of each year.

(6) Authorized foreign and alien insurers complying with subsection (b) of this section are deemed to have satisfied the requirement to file the statement with the commissioner.

(7) The commissioner may allow a life insurer or property and casualty insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of its total premium considerations or total statutory required reserves, respectively, to file the "Annual Statement Blank for Health" as its annual statement with the companion quarterly statement forms.

(8)(A) The National Association of Insurance Commissioners' annual statement convention blank shall be verified by the oath of the insurer's president or vice president and secretary or actuary as applicable or, if a reciprocal insurer, by the oath of its attorney in fact or its like officers if a corporation.

(B)(i) The statement of an alien insurer shall be verified by the oath of the insurer's United States manager or other officer authorized and shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise.

(ii) If the commissioner requires a statement as to the alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible.

(C) The commissioner may waive a requirement under this section for verification under oath.

(9)(A) The commissioner may refuse to continue the insurer's certificate of authority, as provided in § 23-63-211, or may suspend or revoke the certificate of authority of an insurer failing to file its annual statement when due.

(B)(i) In addition, the insurer shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency.

(ii) The penalty shall be collected by the commissioner, if necessary, by a civil suit brought by the commissioner in Pulaski County Circuit Court, unless the penalty is waived by the commissioner upon a showing by the insurer of good cause for its failure to file its report on or before the date due.

(10) At the time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by § 23-61-401.

(11) In addition to information called for and furnished in connection with its annual statement, an insurer shall furnish to the commissioner as soon as reasonably possible such information with respect to its transactions or affairs as the commissioner requests in writing.

(12)(A) In accordance with the specifications applicable to annual financial statements, each authorized domestic insurer and health maintenance organization and hospital or medical service corporation, or other domestic licensee so directed by the State Insurance Department in writing shall also file with the commissioner a quarterly financial statement on a form prescribed by the commissioner not later than forty-five (45) days following the end of each of



the first three (3) calendar quarters of each year, excepting the fourth quarter of each calendar year, that shall be reconciled in the annual financial statement.

(B) The filing specifications of this section for annual financial reports apply to quarterly financial reports.

(b) In addition to the information required by subsection (a) of this section, a market conduct annual statement shall be filed, when applicable, with the commissioner. Property and casualty insurers reporting seven million dollars (\$7,000,000) or more in homeowner or private passenger automobile gross premiums and life and annuity insurers reporting seven million dollars (\$7,000,000) or more in individual or group life or individual annuity gross premiums shall submit the following information by the date prescribed by the commissioner:

- (1) Policies and procedures regarding the handling of claims;
- (2) Any complaints received during the covered period and the nature and disposition of those complaints; and

- (3) Any other market conduct functions the commissioner considers relevant.

(c)(1) Insurers shall submit the market conduct annual statement data required by subsection (b) of this section in an electronic format and manner as prescribed by the commissioner. The commissioner may designate the National Association of Insurance Commissioners to receive the market conduct annual statement on his or her behalf, for the purpose of collecting, compiling, aggregating, and reporting on market conduct annual statement data.

(2) Any forms or data submitted by the insurer as market conduct annual statement data under this subsection are deemed to be documents or information obtained from the insurer by the department as examination under § 23-61-207 without the necessity of a formal examination notice under § 23-61-203 or examination report and adoption order under § 23-61-205.

(d)(1)(A) Annually on or before March 1, each domestic, foreign, and alien insurer authorized to transact business in this state shall file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner as of the December 31 preceding.

(B) The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification.

(C) Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

(2) Foreign insurers that are domiciled in a state with a law substantially similar to this subsection and comply with their state's law are in compliance with this subsection.

(3) In the absence of malice, members of the National Association of Insurance Commissioners, their committees, subcommittees, task

forces, delegates, employees, and others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this subsection and shall not be subject to civil liability for libel, slander, or an other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required in this section.

(4) The commissioner may impose the sanctions set out in subdivision (a)(9) of this section on an insurer failing to file its annual statement with the National Association of Insurance Commissioners when due or within an extension of time that the commissioner for good cause has granted.

(5) Each authorized insurer shall submit its annual and quarterly statement and supplemental information to the National Association of Insurance Commissioners in electronic format as specified by the National Association of Insurance Commissioners.

(e)(1) Each domestic insurer authorized to transact business in this state shall include in its annual statement an opinion, as is relevant to the lines of business the domestic insurer is authorized to write, on its life and health policy and claim reserves and its property and liability loss and loss adjustment expense reserves by a qualified actuary.

(2) The opinion shall be in the format prescribed by the National Association of Insurance Commissioners' Annual and Quarterly Statement Instruction handbook.

**History.** Acts 1959, No. 148, § 62; 1973, No. 35, § 1; A.S.A. 1947, § 66-2220; Acts 1991, No. 723, §§ 17, 18; 1993, No. 527, §§ 2, 3; 1995, No. 1272, § 12; 1999, No. 301, § 1; 2001, No. 1604, §§ 26-28; 2005, No. 506, § 18; 2009, No. 726, § 18; 2011, No. 760, § 3; 2011, No. 1034, § 1.

**Publisher's Notes.** Acts 1991, No. 723, § 19 provided: "Compliance by insurers with Sections 16 through 18 of this act shall be required on or before March 1, 1992."

**Amendments.** The 2009 amendment deleted "hardcopy and" preceding "electronic format" in (b)(5).

The 2011 amendment by No. 760 rewrote (a)(5); inserted present (a)(6) and redesignated the remaining subdivisions accordingly; deleted "in his or her discretion" preceding "may suspend" in (a)(9)(A); and substituted "as the commissioner requests" for "as the commissioner may from time to time request" in (a)(11).

The 2011 amendment by No. 1034 deleted "in his or her discretion" preceding "may suspend" in (a)(8)(A); rewrote (b) and (c); and added (d) and (e).

## 23-63-217. [Repealed.]

**Publisher's Notes.** This section, concerning a required settlement with terminated agents, was repealed by Acts 2001,

No. 1604, § 29. The section was derived from Acts 1961, No. 241, § 1; A.S.A. 1947, § 66-2226.

**23-63-218. Change of domicile.**

(a) Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state. The domestic insurer will be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state. An insurer which changes its status from foreign to domestic shall have all the rights, titles, and interests in the assets of the original corporation, as well as all of its liabilities and obligations. The insurer shall be recognized as an insurer formed under the laws of this state as of the date of its incorporation in its original domiciliary state.

(b)(1) Any domestic insurer may, upon the approval of the Insurance Commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon the transfer, the insurer shall cease to be a domestic insurer and shall be admitted to this state if qualified as a foreign insurer.

(2) The commissioner shall approve any proposed transfer unless he or she shall determine that the transfer is not in the interest of the policyholders of this state.

(c)(1) The certificate of authority, agents, appointments and licenses, rates, and other items which the commissioner allows, in his or her discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon the transfer if the insurer remains qualified to transact the business of insurance in this state.

(2) All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.

(3) Every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner.

(4) However, every transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly the resulting amendments to corporate documents filed or required to be filed with the commissioner.

(d) The commissioner may promulgate rules and regulations to carry out the purposes of this section.

**History.** Acts 1981, No. 820, §§ 1-4;  
A.S.A. 1947, §§ 66-2228 — 66-2231; Acts  
1991, No. 1123, § 19.



## SUBCHAPTER 3 — SERVICE OF PROCESS

## SECTION.

23-63-301. Registered office and registered agent for foreign or alien insurer and domestic reciprocal insurers.

23-63-302. Change of registered office or registered agent.

## SECTION.

23-63-303. Resignation of registered agent.

23-63-304. Service of process of foreign or alien insurers or domestic reciprocal insurers.

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**Effective Dates.** Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the

public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

C.J.S. 46A C.J.S., Ins., § 1570.

### **23-63-301. Registered office and registered agent for foreign or alien insurer and domestic reciprocal insurers.**

Each foreign insurer applying for a certificate of authority to transact business in Arkansas and every domestic reciprocal insurer must designate and continuously maintain in the state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A state bank, domestic corporation, or not-for-profit corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

(3)(A) On and after January 1, 2002, all foreign and alien insurers and all domestic reciprocal insurers holding a subsisting certificate of authority upon August 13, 2001, shall be subject to the provisions of this subchapter, and no later than January 1, 2003, shall file with the Insurance Commissioner the information required in this subchapter to designate an Arkansas-registered agent.

(B) In the event no registered agent has yet been selected and appointed on the commissioner's list for any foreign or alien insurer or domestic reciprocal insurer licensed by the commissioner, service may be processed through the commissioner as agent or by other methods of service provided under Arkansas law to be effective until a new registered agent has been appointed on the records of the commissioner.

(4) In this subchapter licensed foreign insurers shall be deemed to include licensed alien insurers.

**History.** Acts 1959, No. 148, § 60; A.S.A. 1947, § 66-2218; Acts 2001, No. 1604, § 30.

### **CASE NOTES**

#### **ANALYSIS**

Failure to File.  
Jurisdiction.

#### **Failure to File.**

If a foreign insurance company does business in the state without filing the required stipulation as to service of process, an agreement on its part to be bound by such process will nevertheless be presumed. *Ehrman v. Teutonia Ins. Co.*, 1 F. 471 (E.D. Ark. 1880); *Masons' Fraternal Accident Ass'n v. Riley*, 60 Ark. 578, 31

S.W. 148 (1895) (preceding decisions under prior law).

#### **Jurisdiction.**

When a foreign insurance company is authorized to do business in Arkansas and designated the Insurance Commissioner its agent for service, it made itself subject to the jurisdiction of the Arkansas courts even though it is not actually doing business in Arkansas. *New York Fire & Marine Underwriters, Inc. v. Colvin*, 241 Ark. 1019, 411 S.W.2d 657 (1967).

**Cited:** *Globe Life Ins. Co. v.*

Humphries, 258 Ark. 118, 522 S.W.2d 669 (1975); Ray Ross Constr. Co. v. Rañey, 266 Ark. 606, 587 S.W.2d 46 (1979); Pearrow v. National Life & Accident Ins. Co., 703 F.2d 1067 (8th Cir. 1983).

**23-63-302. Change of registered office or registered agent.**

(a) A licensed foreign or alien insurer or a licensed domestic reciprocal insurer may change its registered office or registered agent by delivering to the Insurance Commissioner for filing a statement of change that sets forth:

- (1) Its name;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of its new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of its new registered agent with the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign insurer holding a certificate of authority to transact business in Arkansas or any domestic reciprocal insurer for which he or she is the registered agent by notifying the insurer in writing of the change and signing, either manually or in facsimile, and delivering to the commissioner for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the insurer has been notified of the change.

**History.** Acts 1959, No. 148, § 61; 2219; Acts 1997, No. 1000, § 3; 2001, No. 1983, No. 522, § 2; A.S.A. 1947, § 66- 1604, § 31.

**CASE NOTES**

**ANALYSIS**

Answer.  
Diversity Action.  
Improper Service.  
Method Exclusive.  
Supersession of Section.

**Answer.**

Answer held to be untimely. *Globe Life Ins. Co. v. Humphries*, 258 Ark. 118, 522 S.W.2d 669 (1975) (decision under prior law).

Where foreign insurer demonstrated no prejudice resulting from an incorrect des-

ignation of county in which to file answer to complaint, court did not err in granting a default judgment where answer was not filed within statutory period. *Globe Life Ins. Co. v. Humphries*, 258 Ark. 118, 522 S.W.2d 669 (1975) (decision under prior law).

**Diversity Action.**

Although an insurer did not make an appearance in the Arkansas courts within statutory period in response to a state court summons and complaint, the insurer was not prevented from removing the diversity action to federal court. Hal-



ter v. National Farmers Union Property & Cas. Co., 502 F. Supp. 736 (E.D. Ark. 1980) (decision under prior law).

**Improper Service.**

Although a judgment may be set aside for avoidable casualty upon a showing that service of process upon the defendant was incomplete and invalid, the defendant must also show that he did not know of the proceeding against him and that he has a meritorious defense. *Employers Mut. Cas. Co. v. Buckner*, 233 Ark. 564,

345 S.W.2d 924 (1961) (decision under prior law).

**Method Exclusive.**

Mode of service is exclusive. *St. Paul German Ins. Co. v. Craddock*, 59 Ark. 593, 28 S.W. 424 (1894) (decision under prior law).

**Supersession of Section.**

This section is deemed superseded by ARCP 12(a). In re Amendments to Rules of Civil Procedure, 279 Ark. 470, 651 S.W.2d 63 (1983).

**23-63-303. Resignation of registered agent.**

(a) The registered agent of a licensed foreign insurer or a domestic reciprocal insurer may resign his or her agency appointment by signing and delivering to the Insurance Commissioner for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the commissioner shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The commissioner shall mail the other copy to the insurer at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**History.** Acts 2001, No. 1604, § 32.

**23-63-304. Service of process of foreign or alien insurers or domestic reciprocal insurers.**

(a) The registered agent of a licensed foreign insurer or a licensed domestic reciprocal insurer is the insurer's agent for service of process, notice, or demand required or permitted by law to be served on the insurer.

(b) A licensed foreign insurer or a licensed domestic reciprocal insurer may be served by registered or certified mail, return receipt requested, addressed to the president or the secretary at its principal office shown in its application for a certificate of authority or in its most recent annual statement if the insurer:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under this subchapter; or

(3) Has had its certificate of authority revoked under this subchapter.

(c) When service is made under this section or upon the designated Arkansas-registered agent, service shall be perfected under the Arkansas Rules of Civil Procedure.

(d) This section does not prescribe the only means or, necessarily, the required means of serving a licensed foreign insurer or a licensed domestic reciprocal insurer.

**History.** Acts 2001, No. 1604, § 32;  
2005, No. 506, § 19.

## SUBCHAPTER 4 — RESIDENT AGENTS AND COUNTERSIGNATURES

### SECTION.

23-63-401 — 23-63-404. [Repealed.]

### 23-63-401 — 23-63-404. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 1993, No. 901, § 9. The subchapter was derived from the following sources:

23-63-401. Acts 1959, No. 148, § 65; 1963, No. 138, § 1; A.S.A. 1947, § 66-2223.

23-63-402. Acts 1959, No. 148, § 63; A.S.A. 1947, § 66-2221.

23-63-403. Acts 1959, No. 148, § 64; 1965, No. 89, § 1; 1977, No. 423, § 1; A.S.A. 1947, §§ 66-2222, 66-2222.1.

23-63-404. Acts 1959, No. 148, § 66; A.S.A. 1947, § 66-2224.

## SUBCHAPTER 5 — INSURANCE HOLDING COMPANY REGULATORY ACT

### SECTION.

23-63-501. Title.

23-63-502. Legislative findings.

23-63-503. Definitions.

23-63-504. [Repealed.]

23-63-505. Subsidiaries of insurer.

23-63-506. Control of or merger with domestic insurer — Filing requirements.

23-63-507. Control of or merger with domestic insurer — Exceptions.

23-63-508. Control of or merger with domestic insurer — Content of statement.

23-63-509. Control of or merger with domestic insurer — Alternative filing materials.

23-63-510. Control of or merger with domestic insurer — Approval by commissioner — Hearing.

23-63-511. Control of or merger with domestic insurer — Mailings.

23-63-512. Control of or merger with domestic insurer — Jurisdiction of courts — Service of process.

### SECTION.

23-63-513. Control of or merger with domestic insurer — Violations.

23-63-514. Registration of insurers.

23-63-515. Standards.

23-63-516. Examination.

23-63-517. Confidential treatment.

23-63-518. Rules and regulations.

23-63-519. Judicial review — Mandamus.

23-63-520. Voting of securities.

23-63-521. Injunctions.

23-63-522. Criminal and civil proceedings.

23-63-523. Receivership.

23-63-524. Revocation, suspension, or nonrenewal of insurer's license.

23-63-525. Acquisitions involving insurers not otherwise covered — Definitions.

23-63-526. Acquisitions involving insurers not otherwise covered — Scope.

23-63-527. Acquisitions involving insurers not otherwise covered — Preacquisition notification, waiting period.

## SECTION.

23-63-528. Acquisitions involving insurers not otherwise covered  
— Competitive standard.

23-63-529. Acquisitions involving insurers not otherwise covered  
— Orders and penalties.

## SECTION.

23-63-530. Acquisitions involving insurers not otherwise covered  
— Inapplicable provisions.

**Effective Dates.** Acts 1971, No. 288, § 18: July 1, 1971.

Acts 1973, No. 305, § 3: Mar. 12, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws which prohibit the payment of dividends out of paid in and contributed capital surplus by domestic insurance companies are unduly restrictive of domestic insurance companies which are part of an insurance holding company system and are a deterrent to the making of capital contributions to such companies by parent companies. This deterrent results in such companies making less profit than they otherwise might and in the State receiving lower income tax payments than it otherwise might. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the economic well being of the State, shall be in effect from the date of its passage and approval."

Acts 1975, No. 729, § 9: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public

peace, health and safety shall be in full force and effect from after its passage and approval."

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 723, § 33: Mar. 25, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act



being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overrid-

den, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

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### **23-63-501. Title.**

This subchapter may be cited as the “Insurance Holding Company Regulatory Act”.

**History.** Acts 1971, No. 288, § 1; A.S.A. 1947, § 66-5001.

### **23-63-502. Legislative findings.**

(a)(1) It is found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:

(A) Engage in activities which would enable them to make better use of management skills and facilities;

(B) Diversify into new lines of business through acquisition or organization of subsidiaries;

(C) Have free access to capital market which could provide funds for insurers to use in diversification programs;

(D) Implement sound tax planning conclusions; and

(E) Serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(2) It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:

(A) Control of an insurer is sought by persons who would utilize the control adversely to the interests of policyholders or shareholders;

(B) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;

(C) An insurer which is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(D) An insurer pays dividends to shareholders which jeopardize the financial condition of the insurer.

(3) It is declared that the policies and purposes of this subchapter are to promote the public interest by:

(A) Facilitating the achievement of the objectives enumerated in subsection (a) of this section;

(B) Requiring disclosure of pertinent information relating to changes in control of an insurer;

(C) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including dividends to shareholders paid by the insurer; and

(D) Providing standards governing material transactions between the insurer and its affiliates.

(4) It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers.

(b) Therefore, this state shall exercise regulatory authority over domestic insurers and, unless otherwise provided, not over nondomestic insurers, with respect to the matters contained herein.

**History.** Acts 1971, No. 288, § 2; A.S.A. 1947, § 66-5002.

## CASE NOTES

**Cited:** McNeill v. Security Benefit Life Ins. Co., 28 F.3d 891 (8th Cir. 1994).

## 23-63-503. Definitions.

As used in this subchapter:

(1) “Affiliate” of, or person “affiliated” with a specific person, means a person that through one (1) or more intermediaries:

(A) Controls the person named;

(B) Is controlled by the person named; or

(C) Is under common control with the person named;

(2)(A) “Control” or “controlling” means to have the power to direct or cause the direction of the management and policies of a person, unless the power is due to an official position or corporate office:

(i) Through the ownership of voting securities;

(ii) By contract other than a commercial contract for goods or nonmanagement services; or

(iii) Otherwise.

(B) Control is presumed to exist if a person owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact.

(C) After furnishing notice to the persons and the opportunity to be heard, the Insurance Commissioner may determine that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) An “insurance holding company system” consists of two (2) or more affiliated persons, one (1) or more of which is an insurer. However, for purposes of this subchapter, the term shall not be deemed to include a domestic insurer or domestic holding company system authorized and doing business solely in this state and which is not affiliated with a foreign or alien insurer;

(4) “Insurer” means the same as defined in § 23-60-102, but “insurer” does not include:

(A) Agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(B) Fraternal benefit societies; or

(C) Nonprofit hospital and medical service corporations;

(5)(A) “Person” includes a corporation, partnership, association, joint-stock company, business trust, unincorporated organization, depository corporation, a similar entity, or a combination of these entities acting in concert.

(B) “Person” does not include a securities broker performing no more than the usual and customary broker’s function.

(C) “Person” includes an individual as that term is used in § 23-63-506;

(6) “Security holder” means a person who owns a security of a named person, including:

(A) Common stock;

(B) Preferred stock;

(C) Debt obligations; and

(D) Any other security convertible into or evidencing the right to acquire these securities;

(7) “Subsidiary” means an affiliate of a named person controlled by the person through one (1) or more intermediaries; and

(8) “Voting security” includes a security convertible into or evidencing a right to acquire a voting security.



**Publisher's Notes.** Acts 1991, No. 723, § 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."

**Amendments.** The 2009 amendment, in (4), substituted "§ 23-60-102" for "§ 23-60-102(2)" and made a stylistic change.

The 2011 amendment deleted "directly, or indirectly" following "a person that" in the introductory language of (1); rewrote

the introductory language of present (2)(A) and rewrote (2)(A)(iii); deleted "directly, or indirectly" following "person" in present (2)(B); deleted "in interest" following "persons" in present (2)(C); substituted "corporations" for "associations" in (4)(C); rewrote present (5)(C); deleted former (6) and redesignated former (7) as present (6); and inserted present (7).

### 23-63-504. [Repealed.]

**Publisher's Notes.** This section, concerning applicability, was repealed by Acts 2011, No. 887, § 2. The section was de-

rived from Acts 1971, No. 288, § 2; A.S.A. 1947, § 66-5002; Acts 1989, No. 772, § 1.

### 23-63-505. Subsidiaries of insurer.

(a) **AUTHORIZATION.** Any domestic insurer, subject to this subchapter, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries.

(b) **QUALIFICATION OF INVESTMENT — WHEN DETERMINED.** Whether any investment pursuant to subsection (a) of this section meets the applicable requirements thereof is to be determined immediately after the investment is made, taking into account the then-outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(c) **CESSATION OF CONTROL.** If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the Insurance Commissioner may prescribe unless, at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this subchapter and the insurer has notified the commissioner thereof.

**History.** Acts 1971, No. 288, § 4; A.S.A. 1947, § 66-5004.

### 23-63-506. Control of or merger with domestic insurer — Filing requirements.

(a)(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the insurer.

(2) No person shall enter into an agreement to merge with or otherwise acquire control of a domestic insurer or any person controlling a domestic insurer unless at the time the offer, request, or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved:

(A) The person has filed with the Insurance Commissioner and has sent to the insurer a statement containing the information required by this section and §§ 23-63-507 — 23-63-513; and

(B) The offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section and §§ 23-63-507 — 23-63-513.

(b)(1) For the purposes of this section and §§ 23-63-507 — 23-63-513, a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in § 23-63-527(b), sixty (60) days prior to the proposed effective date of the acquisition. Failure to file is subject to § 23-63-529(c).

(2) As used in this section, “person” shall not include any securities broker holding, in the usual and customary brokers’ function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

**History.** Acts 1971, No. 288, § 5; A.S.A. § 30, provided: “Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992.”  
1947, § 66-5005; Acts 1991, No. 723, § 21;  
2001, No. 1604, § 33; 2005, No. 506, § 21.

**Publisher’s Notes.** Acts 1991, No. 723,

### **23-63-507. Control of or merger with domestic insurer — Exceptions.**

The provisions of §§ 23-63-506 — 23-63-513 shall not apply to:

(1) Any offers, requests, invitations, agreements, or acquisitions by the person referred to in § 23-63-506 of any voting security referred to in that section which, immediately prior to the consummation of the offer, request, invitation, agreement, or acquisition, was not issued and outstanding and the issuance of which will not have the effect of changing or influencing the control of a domestic insurer;

(2) Any transaction which is subject to the provisions of §§ 23-69-142 — 23-69-145 of the laws of this state, dealing with the merger or consolidation of two (2) or more insurers;

(3) Any offer, request, invitation, agreement, or acquisition which the commissioner, by order, shall exempt therefrom as:

(A) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(B) As otherwise not comprehended within the purposes of §§ 23-63-506 — 23-63-513.

**History.** Acts 1971, No. 288, § 5; 1985, No. 804, § 3; A.S.A. 1947, § 66-5005.

**Publisher's Notes.** Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no

prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

### **23-63-508. Control of or merger with domestic insurer — Content of statement.**

(a) The statement to be filed with the Insurance Commissioner pursuant to this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in § 23-63-506 is to be effected, hereinafter called "acquiring party", and:

(A) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(B) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to the positions. The list shall include for each individual the information required by subdivision (a)(1)(A) of this section;

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to in § 23-63-506 which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in § 23-63-



506, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) The amount of each class of any security referred to in § 23-63-506 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in § 23-63-506 in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loans or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any security referred to in § 23-63-506 during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates to purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) A description of any recommendations to purchase any security referred to in § 23-63-506 made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in § 23-63-506 and, if distributed, of additional soliciting material relating thereto;

(11) The terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in § 23-63-506 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto; and

(12) Such additional information as the commissioner may, by rule or regulation, prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.

(b)(1) If the person required to file the statement referred to in § 23-63-506 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subdivisions (a)(1)-(12) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member.

(2) If any partner, member, or person is a corporation or the person required to file the statement referred to in § 23-63-506 is a corporation, the commissioner may require that the information called for by subdivisions (a)(1)-(12) of this section shall be given with respect to the corporation, each officer and director of the corporation, and each

person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

(c) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to §§ 23-63-506 — 23-63-513, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change. The insurer shall send the amendment to its stockholders.

**History.** Acts 1971, No. 288, § 5; A.S.A. § 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."

### **23-63-509. Control of or merger with domestic insurer — Alternative filing materials.**

If any offer, request, invitation, agreement, or acquisition referred to in § 23-63-506 is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in § 23-63-506 may utilize the documents in furnishing the information called for by that statement.

**History.** Acts 1971, No. 288, § 5; A.S.A. U.S.C. § 77a et seq. The Securities and Exchange Act of 1934 is codified as 15

**U.S. Code.** The Securities Act of 1933, U.S.C. §§ 77b et seq.; 78a et seq.  
referred to in this section, is codified as 15

### **23-63-510. Control of or merger with domestic insurer — Approval by commissioner — Hearing.**

(a) The Insurance Commissioner shall approve any merger or other acquisition of control referred to in § 23-63-506 unless, after a public hearing thereon, he or she finds that:

(1) After change of control, the domestic insurer referred to in § 23-63-506 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(4) The terms of the offer, request, invitation, agreement, or acquisition referred to in § 23-63-506 are unfair and unreasonable to the security holders of the insurer;

(5) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(6) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(b)(1) The public hearing referred to in subsection (a) of this section shall be held within thirty (30) days after the statement required by § 23-63-506 is filed, and at least twenty (20) days' notice of the hearing shall be given by the commissioner to the person filing the statement.

(2) Not less than seven (7) days' notice of the public hearing shall be given by the person filing the statement to the insurer and to the other persons as may be designated by the commissioner.

(b)(3)(A) The commissioner shall make a determination within the sixty-day period preceding the effective date of the proposed transaction.

(B) In connection with the change in control of the insurer, any determination by the commissioner that the person acquiring control of a domestic insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) calendar days after the date of notification of the change in control submitted pursuant to § 23-63-506(b).

(4) At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine, and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the courts of this state.

(5) All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

**History.** Acts 1971, No. 288, § 5; A.S.A. 1947, § 66-5005; Acts 1993, No. 901, § 10; 2001, No. 1604, § 34.

### **23-63-511. Control of or merger with domestic insurer — Mailings.**

(a) All statements, amendments, or other materials filed pursuant to § 23-63-506 or § 23-63-508 and all notices of public hearings held pursuant to § 23-63-510 shall be mailed by the insurer to its share-



holders within five (5) business days after the insurer has received the statements, amendments, other material, or notices.

(b) The expenses of mailing shall be borne by the person making the filing.

(c) As security for the payment of the expenses, the person shall file with the Insurance Commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

**History.** Acts 1971, No. 288, § 5; A.S.A. 1947, § 66-5005.

### **23-63-512. Control of or merger with domestic insurer — Jurisdiction of courts — Service of process.**

(a) The courts of this state are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the Insurance Commissioner under §§ 23-63-506 — 23-63-513 and over all actions involving that person arising out of violations of §§ 23-63-506 — 23-63-513.

(b)(1) Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of §§ 23-63-506 — 23-63-513.

(2) Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at the person's last known address.

**History.** Acts 1971, No. 288, § 5; A.S.A. 1947, § 66-5005.

### **23-63-513. Control of or merger with domestic insurer — Violations.**

The following shall be violations of §§ 23-63-506 — 23-63-513:

(1) The failure to file any statement, amendment, or other materials required to be filed pursuant to § 23-63-506 or § 23-63-508; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the Insurance Commissioner has given his or her approval thereto.

**History.** Acts 1971, No. 288, § 5; A.S.A. 1947, § 66-5005.

### **23-63-514. Registration of insurers.**

(a) **REGISTRATION.** Every insurer that is authorized to do business in this state and that is a member of an insurance holding company system shall register with the Insurance Commissioner, except:

(1) A foreign insurer subject to disclosure requirements and standards adopted by code, statute, or regulation in the jurisdiction of its

domicile that are substantially similar to those contained in this section; and

(2) A domestic insurer or a domestic holding company system authorized and doing business solely within this state that:

(A) Is not affiliated with a foreign or alien insurer; and

(B) Reported less than seven million dollars (\$7,000,000) in gross premium during the most recent annual reporting period.

(b) INFORMATION AND FORM REQUIRED. Every insurer subject to registration shall file a registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain current information about:

(1) The capital structure, general financial condition, and ownership and management of the insurer and any person controlling the insurer;

(2) The identity of every member of the insurance holding company system;

(3) The following agreements in force, relationships subsisting, and transactions currently outstanding between the insurer and its affiliates:

(A) Loans, other investments, purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales, or exchanges of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) All management and service contracts and all cost-sharing arrangements;

(F) Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) MATERIALITY.

(1) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (0.5%) or less of an insurer's admitted assets as of the December 31 next-preceding shall not be deemed material for purposes of this section.

(2)(A) However, each registered insurer shall disclose in writing to the commissioner within five (5) business days following the declaration of a dividend and no less than ten (10) business days prior to the payment of the dividend, all ordinary dividends payable to shareholders.

(B) The disclosure shall also be included in the reporting insurer's next annual and restated insurance registration statement and upon any statutory filing required under § 23-63-514 or § 23-63-515.

(d) AMENDMENTS TO REGISTRATION STATEMENTS.

(1)(A) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each material change or addition.

(B) However, subject to § 23-63-515(c), each registered insurer shall report all dividends and other distributions to shareholders within five (5) business days following the declaration and no less than ten (10) business days prior to the payment of the dividend or other distribution.

(2) Registered insurers shall annually refile an amended and restated registration statement in the manner and at the times prescribed by the commissioner.

(e) TERMINATION OF REGISTRATION. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) CONSOLIDATED FILING. The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) ALTERNATIVE REGISTRATION. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(h) EXEMPTIONS. The provisions of this section shall not apply to any insurer, information, or transaction if, and to the extent that, the commissioner by rule, regulation, or order shall exempt it from the provisions of this section.

(i) DISCLAIMER.

(1) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or the disclaimer may be filed by the insurer or any member of an insurance holding company system.

(2) The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation.

(3) After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of



the insurer's relationship with the person unless and until the commissioner disallows the disclaimer.

(4) The commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(j) **INFORMATION OF INSURERS.** Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, when such information is reasonably necessary to enable the insurer to comply with the provisions of this subchapter.

(k) **VIOLATIONS.** The failure to file a registration statement or any amendment thereto required by this section within the time specified for the filing shall be a violation of this section.

(l) **APPLICABILITY.** This section applies to domestic and foreign insurers or insurance holding company systems consistent with the definitions in § 23-63-503.

**History.** Acts 1971, No. 288, § 6; A.S.A. 1947, § 66-5006; Acts 1989, No. 772, § 2; 1991, No. 723, § 23; 1999, No. 454, § 1; 2005, No. 506, § 22; 2007, No. 496, § 9; 2011, No. 887, §§ 3, 4.

**Publisher's Notes.** Acts 1991, No. 723, § 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."

**Amendments.** The 2007 amendment

added the (c)(1) designation; substituted "(0.5%)" for "(.5%)" in (c)(1); and added (c)(2).

The 2011 amendment added "and reported less than seven million dollars (\$7,000,000) in gross premium during the most recent annual reporting period" in (a)(1)(B); deleted former (a)(2); and added (l).

## 23-63-515. Standards.

(a)(1) Material transactions by insurers registered with the Insurance Commissioner under § 23-63-514 with their affiliates shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) The books, accounts, and records of every party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties;

(C) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(D) The charges or fees for services performed shall be reasonable; and

(E) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(2) The following transactions involving a domestic insurer subject to this subchapter and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in

writing of its intention to enter into such a transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such a period:

(A) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided such transactions are equal to or exceed as of December 31 next-preceding:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

(B) Loans or extensions of credit to any person who is not an affiliate, when the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided that the transactions are equal to or exceed as of December 31 next-preceding:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

(C) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next-preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;

(D) All management agreements, service contracts, and all cost sharing arrangements; and

(E) Any material transactions specified by regulation which the commissioner determines may adversely affect the interests of the insurer's policyholders.

(3) A domestic insurer subject to this subchapter may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that those separate transactions were entered into over any twelve-month period for such a purpose, the commissioner may exercise his or her authority under § 23-63-522.

(4) In reviewing transactions pursuant to subdivision (a)(2) of this section, the commissioner shall consider whether the transactions

comply with the standards set forth in subdivision (a)(1) of this section and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty (30) days of any investment of a domestic insurer subject to this subchapter in any one (1) corporation if the total investment in such a corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

(b) For purposes of this subchapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent, past, and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in subsidiaries made pursuant to § 23-63-505. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment the investment so warrants.

(c) No insurer subject to registration under § 23-63-514 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until:

(1) Thirty (30) days after the commissioner has received notice of the declaration thereof and within that period has not disapproved the payment; or

(2) The commissioner shall have approved the payment within the thirty-day period.

(d)(1) As used in this section, "extraordinary dividend or distribution" means any dividend or distribution of cash or other property whose fair market value, together with that of the other dividends or distributions made within the preceding twelve (12) months, exceeds the greater of:

(A) Ten percent (10%) of the insurer's surplus with regard to policyholders as of the December 31 preceding the payment of the dividend or distribution; or



(B) The net gain from operations of the insurer if the insurer is a life insurer or the net income if the insurer is not a life insurer not including realized capital gains for the twelve-month period ending on the preceding December 31 but shall not include pro rata distributions of any class of the insurer's own securities.

(2)(A) In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as a dividend.

(B) The carry forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediately preceding calendar years.

(e) Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon stockholders until:

(1) The commissioner has approved the payment of the dividend or distribution; or

(2) The commissioner has not disapproved the payment within the thirty-day period referred to in subsection (c) of this section.

(f) Notwithstanding any other provisions of law, an insurer may declare and pay, subject to the provisions of this section, an extraordinary dividend or distribution from its gross paid-in and contributed surplus, provided that:

(1) The dividend or distribution shall be made only upon a determination by the board of directors of the insurer that the assets of the insurer are in excess of the needs of its business; and

(2) Each dividend or distribution, when made, shall be identified as a distribution from gross paid-in and contributed surplus, and the amount per share shall be disclosed to the shareholders receiving the dividend or distribution concurrently with its distribution.

**History.** Acts 1971, No. 288, § 7; 1973, No. 305, § 1; A.S.A. 1947, § 66-5007; Acts 1991, No. 723, § 24; 1993, No. 901, § 11; 2001, No. 1603, § 10; 2005, No. 506, § 23; 2007, No. 496, § 10.

**Publisher's Notes.** Acts 1991, No. 723, § 30, provided: "Compliance with Sec-

tions 20 through 29 of this act shall be required on and after January 1, 1992."

**Amendments.** The 2007 amendment, in (d)(2)(A), inserted "other than a life insurer" following "insurer" and substituted "a dividend" for "dividends."

## 23-63-516. Examination.

(a) **POWER OF COMMISSIONER.** Subject to the limitation contained in this section and in addition to the powers which the Insurance Commissioner has under §§ 23-61-101 et seq., 23-61-201 et seq., and 23-61-301 et seq. relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under § 23-63-514 to produce the records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to

ascertain the financial condition or legality of conduct of the insurer. In the event the insurer fails to comply with the order, the commissioner shall have the power to examine the affiliates to obtain the information.

(b) **USE OF CONSULTANTS.** The commissioner may retain at the insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any person so retained shall be under the direction and control of the commissioner and shall act in an advisory capacity.

(c) **EXPENSES.** Each registered insurer producing for examination records, books, and papers pursuant to subsection (a) of this section shall be liable for and shall pay the expense of the examination in accordance with §§ 23-61-101 et seq., 23-61-201 et seq., and 23-61-301 et seq.

**History.** Acts 1971, No. 288, § 8; A.S.A. § 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."  
1947, § 66-5008; Acts 1991, No. 723, § 25.

**Publisher's Notes.** Acts 1991, No. 723,

### **23-63-517. Confidential treatment.**

All information, documents, and copies thereof obtained by or disclosed to the Insurance Commissioner or any other person in the course of an examination or investigation made pursuant to § 23-63-516 and all information reported pursuant to § 23-63-514 shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states. The information, documents, and copies thereof shall not be subject to subpoena or be made public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving notice and opportunity to be heard to the insurer and its affiliates who would be affected thereby, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof. In that event, the commissioner may publish all or any part thereof in such a manner as he or she may deem appropriate.

**History.** Acts 1971, No. 288, § 9; A.S.A. § 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."  
1947, § 66-5009; Acts 1991, No. 723, § 26.

**Publisher's Notes.** Acts 1991, No. 723,

### **RESEARCH REFERENCES**

**Ark. L. Rev.** Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

**23-63-518. Rules and regulations.**

After compliance with §§ 23-61-108 and 23-61-304 of the Arkansas Insurance Code, the Insurance Commissioner may issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this subchapter.

**History.** Acts 1971, No. 288, § 10; A.S.A. 1947, § 66-5010.

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

**23-63-519. Judicial review — Mandamus.**

(a)(1) Any person aggrieved by any act, determination, rule, regulation, order, or any other action of the Insurance Commissioner pursuant to this subchapter may appeal therefrom to the Pulaski County Circuit Court.

(2) The court shall conduct its review without a jury and by trial de novo, except that, if all parties including the commissioner so stipulate, the review shall be confined to the record.

(3) Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(b) The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order, or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this subchapter may petition the Pulaski County Circuit Court for a writ in the nature of a mandamus directing the commissioner to act or make the determination forthwith.

**History.** Acts 1971, No. 288, § 11; A.S.A. 1947, § 66-5011.

**23-63-520. Voting of securities.**

(a) WHEN PROHIBITED.

(1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this subchapter or of any rule, regulation, or order issued by the Insurance Commissioner pursuant to this subchapter may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding.

(2) However, no action taken at any meeting shall be invalidated by the voting of the securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.



(3) If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this subchapter or of any rule, regulation, or order issued by the commissioner pursuant to it, the insurer or the commissioner may apply to the Pulaski County Circuit Court to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of §§ 23-63-506 — 23-63-513 or any rule, regulation, or order issued by the commissioner pursuant to it to enjoin the voting of any security so acquired, to void any vote of a security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders, or the public may require.

(b) SEQUESTRATION OF VOTING SECURITIES. In any case in which a person has acquired or is proposing to acquire any voting securities in violation of this subchapter or any rule, regulation, or order issued by the commissioner pursuant to it, the Pulaski County Circuit Court may, on such notice as the court deems appropriate and upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this subchapter. Notwithstanding any other provisions of law, for the purposes of this subchapter, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

**History.** Acts 1971, No. 288, § 12;  
A.S.A. 1947, § 66-5012.

### **23-63-521. Injunctions.**

Whenever it appears to the Insurance Commissioner that any insurer or any director, officer, employee, or agent of an insurer has committed or is about to commit a violation of this subchapter or of any rule, regulation, or order issued by the commissioner pursuant to it, the commissioner may apply to the Pulaski County Circuit Court for an order enjoining the insurer or the director, officer, employee, or agent of the insurer from violating or continuing to violate this subchapter or any rule, regulation, or order, and for such other relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

**History.** Acts 1971, No. 288, § 12;  
A.S.A. 1947, § 66-5012.

### **23-63-522. Criminal and civil proceedings.**

(a) Whenever it appears to the Insurance Commissioner that any insurer or any director, officer, employee, or agent of the insurer has committed a willful violation of this subchapter, the commissioner may cause criminal proceedings to be instituted in the circuit court for the county in which the principal office of the insurer is located or, if the

insurer has no office in the state, then by the Pulaski County Circuit Court, against the insurer or the responsible director, officer, employee, or agent of the insurer.

(b)(1) Any insurer that willfully violates this subchapter shall be fined not more than ten thousand dollars (\$10,000).

(2) Any individual who willfully violates this subchapter shall be fined not more than three thousand dollars (\$3,000). If the willful violation involves the deliberate perpetration of a fraud upon the commissioner, the individual shall be guilty of a Class D felony.

(c) Any officer, director, or employee of an insurance holding company system who knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the purpose to deceive the commissioner in the performance of his or her duties under this subchapter, shall be guilty of a Class D felony. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

(d)(1) Any insurer failing, without just cause, to file any registration statement as required in this subchapter shall be required after notice and hearing to pay a penalty of two hundred dollars (\$200) for each day's delay, to be recovered by the commissioner, if necessary, by a civil suit therefor brought by the commissioner in the Pulaski County Circuit Court.

(2) The commissioner may reduce the penalty provided in this subsection if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(e)(1) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to §§ 23-63-506 — 23-63-513 or which violate this subchapter, shall pay in their individual capacity a civil penalty of not more than five thousand dollars (\$5,000) per violation, after notice and hearing before the commissioner.

(2) In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(f)(1) Whenever it appears to the commissioner that any insurer subject to this subchapter or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract that is subject to § 23-63-515 and which would not have been approved had such approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract.

(2) After notice and hearing, the commissioner may also order the insurer to void any such contracts and restore the status quo if such an action is in the best interest of the policyholders, creditors, or the public.

**History.** Acts 1971, No. 288, § 13; A.S.A. 1947, § 66-5013; Acts 1991, No. 723, § 27; 2005, No. 1994, § 450.

**Publisher's Notes.** Acts 1991, No. 723,

§ 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."

### **23-63-523. Receivership.**

(a) Whenever it appears to the Insurance Commissioner that any person has committed a violation of this subchapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in § 23-68-101 et seq. to take possession of the property of the domestic insurer and to conduct the business thereof.

(b) If an order for liquidation or rehabilitation of the domestic insurer is entered, the receiver appointed under such an order shall have the right to recover on behalf of the insurer the distributions and payments made during the one (1) year preceding the petition for liquidation, conservation, or rehabilitation:

(1) The amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock to any parent corporation or holding company or person or affiliate who otherwise controlled the insurer; or

(2) Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiaries to a director, officer, or employee.

(c) No such distribution shall be recoverable if the parent or affiliate shows that, when paid, such a distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such a distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(d) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of the distributions or payments under subsection (b) of this section the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(e) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(f) To the extent that any person liable under subsection (d) of this section is insolvent or otherwise fails to pay claims due from it pursuant to that subsection, its parent corporation or holding company, or person who otherwise controlled it at the time the distribution was paid, shall



be jointly and severally liable for any resulting deficiency in the amount recovered from such a parent corporation or holding company or person who otherwise controlled it.

**History.** Acts 1971, No. 288, § 14; A.S.A. 1947, § 66-5014; Acts 1991, No. 723, § 28. § 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."

**Publisher's Notes.** Acts 1991, No. 723,

### **23-63-524. Revocation, suspension, or nonrenewal of insurer's license.**

(a) Whenever it appears to the Insurance Commissioner that any person has committed a violation of this subchapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public.

(b) Any determination shall be accompanied by specific findings of fact and conclusions of law.

**History.** Acts 1971, No. 288, § 15; A.S.A. 1947, § 66-5015.

### **23-63-525. Acquisitions involving insurers not otherwise covered — Definitions.**

The following definitions shall apply for the purposes of §§ 23-63-525 — 23-63-530 only:

(1) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers; and

(2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

**History.** Acts 1991, No. 723, § 29.

**Publisher's Notes.** Acts 1991, No. 723, § 30, provided: "Compliance with Sec-

tions 20 through 29 of this act shall be required on and after January 1, 1992."

### **23-63-526. Acquisitions involving insurers not otherwise covered — Scope.**

(a) Except as exempted in subsection (b) of this section, §§ 23-63-525 — 23-63-528 apply to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(b) Sections 23-63-525 — 23-63-528 shall not apply to the following:

(1) An acquisition subject to approval or disapproval by the Insurance Commissioner pursuant to §§ 23-63-506 — 23-63-513;

(2) A purchase of securities solely for investment purposes, so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under § 23-63-503(2), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such a disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with § 23-63-527(b) thirty (30) days prior to the proposed effective date of the acquisition. However, such a preacquisition notification is not required for exclusion if the acquisition would otherwise be excluded from §§ 23-63-525 — 23-63-530 by any other subdivision of this subsection;

(4) The acquisition of already affiliated persons;

(5)(A) An acquisition if, as an immediate result of the acquisition:

(i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market;

(ii) There would be no increase in any market share; or

(iii) In no market would the combined market share of the involved insurers exceed twelve percent (12%) of the total market, and the market share increases by more than two percent (2%) of the total market.

(B) For purposes of this subdivision (b)(5), a "market share" means a direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(6) An acquisition for which a preacquisition notification would be required pursuant to § 23-63-527, due solely to the resulting effect on the ocean marine insurance line of business; or

(7) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that such an insurer is in failing condition, and there is a lack of a feasible alternative to improving such a condition, and the public benefits of improving such an insurer's condition through acquisition exceed the public benefits that would arise from not lessening competition. The findings must be communicated by the domiciliary commissioner to the commissioner of this state.

**History.** Acts 1991, No. 723, § 29.

**Publisher's Notes.** Acts 1991, No. 723, § 30, provided: "Compliance with Sections 20 through 29 of this act shall be required on and after January 1, 1992."

**23-63-527. Acquisitions involving insurers not otherwise covered — Preacquisition notification, waiting period.**

(a) An acquisition covered by § 23-63-526 may be subject to an order pursuant to § 23-63-529 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The Insurance Commissioner shall give confidential treatment to information submitted under this section in the same manner as provided in § 23-63-517.

(b) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets which, under § 23-63-526(b)(5), cause the acquisition not to be exempted from the provisions of §§ 23-63-525 — 23-63-528. The commissioner may require such additional material and information as he or she deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standards of § 23-63-528. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such a person indicating his or her ability to render an informed opinion.

(c) The waiting period required shall begin on the date of receipt by the commissioner of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of the receipt or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

**History.** Acts 1991, No. 723, § 29.

tions 20 through 29 of this act shall be

**Publisher's Notes.** Acts 1991, No. 723, § 30, provided: "Compliance with Sec-

required on and after January 1, 1992."

**23-63-528. Acquisitions involving insurers not otherwise covered — Competitive standard.**

(a) The Insurance Commissioner may enter an order under § 23-63-529(a) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with § 23-63-527.

(b) In determining whether a proposed acquisition would violate the competitive standards of subsection (a) of this section, the commissioner shall consider the following:

(1) Any acquisition covered under § 23-63-526 involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:



(A) If the market is:

(i) Highly concentrated and the involved insurers possess the following shares of the market:

**Insurer A**

Four percent (4%)

Ten percent (10%)

Fifteen percent (15%)

**Insurer B**

Four percent (4%) or more

Two percent (2%) or more

One percent (1%) or more

(ii) Not highly concentrated and the involved insurers possess the following shares of the market:

**Insurer A**

Five percent (5%)

Ten percent (10%)

Fifteen percent (15%)

Nineteen percent (19%)

**Insurer B**

Five percent (5%) or more

Four percent (4%) or more

Three percent (3%) or more

One percent (1%) or more

(B) A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the totals of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in subsection (a) of this section. For the purpose of this subdivision, the insurer with the largest share of the market shall be deemed to be Insurer A;

(2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market from the two (2) largest to the eight (8) largest has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under § 23-63-526 involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in subsection (a) of this section if:

(A) There is a significant trend toward increased concentration in the market;

(B) One (1) of the insurers involved is one (1) of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(C) Another involved insurer's market is two percent (2%) or more;

(3) For purposes of this subsection:

(A) The term "insurer" includes any company or group of companies under common management ownership or control;

(B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the

National Association of Insurance Commissioners and to information, if any, submitted by the parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business with such a line being that used in the annual statement required to be filed by insurers doing business in this state and the relevant geographical market is assumed to be this state; and

(C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner; and

(4)(A) Even though an acquisition is not prima facie violative of the competitive standard under subdivisions (b)(1) and (2) of this section, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence.

(B) Even though an acquisition is prima facie violative of the competitive standard under subdivisions (b)(1) and (2) of this section, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence.

(C) Relevant factors in making a determination under this subdivision (b)(4) include, but are not limited to, the following:

- (i) Market shares;
- (ii) Volatility of ranking of market leaders;
- (iii) Number of competitors;
- (iv) Concentration;
- (v) Trend of concentration in the industry; and
- (vi) Ease of entry and exit into the market.

(c) An order may not be entered under § 23-63-529(a) if:

(1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(2) The acquisition will substantially increase the availability of insurance, and the public benefits of such an increase exceed the public benefits which would arise from not lessening competition.

**History.** Acts 1991, No. 723, § 29.

§§ 20-29 of this act shall be required on

**Publisher's Notes.** Acts 1991, No. 723,

and after January 1, 1992."

§ 30, provided: "Compliance with

## **23-63-529. Acquisitions involving insurers not otherwise covered — Orders and penalties.**

(a)(1) If an acquisition violates the standards of §§ 23-63-525 — 23-63-528, the Insurance Commissioner may enter an order:

(A) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(B) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(2) Such an order shall not be entered unless there is a hearing, and notice of the hearing is issued prior to the end of the waiting period and not less than ten (10) days prior to the hearing, and the hearing is concluded and the order is issued no later than sixty (60) days after the end of the waiting period. Every order shall be accompanied by a written decision of the commissioner setting forth his or her findings of fact and conclusions of law.

(3) An order entered under this subsection shall not become final earlier than thirty (30) days after it is issued during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such a plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of §§ 23-63-525 — 23-63-528 would be remedied and the order vacated and modified.

(4) An order pursuant to this subsection shall not apply if the acquisition is not consummated.

(b) Any person who violates a cease and desist order of the commissioner under subsection (a) of this section and while such an order is in effect may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to any one (1) or more of the following:

(1) A monetary penalty of not more than ten thousand dollars (\$10,000) for every day of violation; and

(2) Suspension or revocation of the person's license.

(c) Any insurer or other person who fails to make any filing required by §§ 23-63-525 — 23-63-528 and who fails to demonstrate a good faith effort to comply with any such filing requirement shall be subject to a fine of not more than fifty thousand dollars (\$50,000).

**History.** Acts 1991, No. 723, § 29.

§§ 20-29 of this act shall be required on

**Publisher's Notes.** Acts 1991, No. 723,

and after January 1, 1992."

§ 30, provided: "Compliance with

### **23-63-530. Acquisitions involving insurers not otherwise covered — Inapplicable provisions.**

Sections 23-63-520 and 23-63-523 do not apply to acquisitions covered under § 23-63-526.

**History.** Acts 1991, No. 723, § 29.

§§ 20-29 of this act shall be required on

**Publisher's Notes.** Acts 1991, No. 723,

and after January 1, 1992."

§ 30, provided: "Compliance with

## **SUBCHAPTER 6 — FINANCIAL REPORTING STANDARDS**

### **SECTION.**

23-63-601. Definition.

23-63-602. Assets as deductions from liabilities.

### **SECTION.**

23-63-603. Assets not allowed.

23-63-604. Liabilities — In general.

23-63-605 — 23-63-609. [Repealed.]



## SECTION.

23-63-610. Assets — Conflict of treatment in subchapters in Arkansas Insurance Code.

23-63-611. Asset valuation.

23-63-612. Purpose — Compliance date.

23-63-613. Use of new and revised manuals — Rule-making authority.

## SECTION.

23-63-614. Domestic title insurance and aviation title insurance reserves.

**Effective Dates.** Acts 1961, No. 466, § 13: Mar. 16, 1961. Emergency clause provided: "It has been found, and is hereby declared, that the use of the 1958 mortality tables authorized under this act, which tables take account of the improvement in the life expectancy of the American people since the 1941 table was developed, will greatly reduce the need for deficiency reserves required under current tables and will result in keeping down the cost of life insurance; and that since use of the 1958 mortality tables has already been approved in 31 states and will probably be approved by the remaining states during their current or next legislative session, prompt enactment of this Act is desirable so that policies may be issued on a uniform basis in all such states. Therefore, an emergency is hereby declared to exist and, this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its passage and approval."

Acts 1973, No. 195, § 5: effective as to purchases and other acquisitions, Jan. 1, 1972. Emergency clause provided: "It is hereby found and determined by the General Assembly of Arkansas that there are ever increasing investments in data processing systems being made by the insurance companies of this State, that such investments should be encouraged as they allow insurance companies to provide better and more efficient service to their policyholders, and that there presently exists in Arkansas no adequate statutory authorization for admitting such systems

as assets of those companies. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage." Approved March 2, 1973.

Acts 1975, No. 729, § 9: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

**23-63-601. Definition.**

In any determination of the financial condition, including whether an asset is allowable, of a domestic insurer, domestic title insurer, or other domestic regulated entities reporting to the Insurance Commissioner, including health maintenance organizations, hospital or medical service corporations, farmers' mutual aid associations or companies, and other licensees, all hereinafter called "reporting entities" for purposes of this subchapter, the definition of an "asset" contained in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual", with certain additions, will be used in the determination. Additions shall include, but may not be limited to, the following:

(1)(A) Electronic data processing equipment, licenses, and operating system software, excluding any amount paid to officers and employees of the reporting entity, necessary for installation and use of a data processing or accounting system, or both, to be used in connection with the business of the insurer or reporting entity.

(B) Commencing on and after January 1, 2001, assets allowed under this section, as well as nonoperating system software, shall be accounted for in accordance with the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual"; and

(2) Other assets as specified by the commissioner in a rule or regulation.

**History.** Acts 1959, No. 148, § 82; 1961, No. 466, § 9; 1973, No. 195, § 1; 1975, No. 729, § 7; 1981, No. 809, § 2; A.S.A. 1947, § 66-2501; Acts 2001, No. 1566, § 3.

**Publisher's Notes.** Acts 1973, No. 195,

§ 2, provided that the act would be effective as to purchases and other acquisitions of assets as described in subdivision (13) of this section on and after January 1, 1972.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

**23-63-602. Assets as deductions from liabilities.**

Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets. Deductions from assets may be charged as liabilities in accordance with the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual".

**History.** Acts 1959, No. 148, § 83; A.S.A. 1947, § 66-2502; Acts 2001, No. 1566, § 4.

**23-63-603. Assets not allowed.**

Assets not allowed shall be those so referenced or described as nonadmitted in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual", unless otherwise specified in this subchapter.

**History.** Acts 1959, No. 148, § 84; A.S.A. 1947, § 66-2503; Acts 2001, No. 1566, § 5.

**23-63-604. Liabilities — In general.**

In any determination of the financial condition of a reporting entity, liabilities shall include definitions and amounts specified in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual".

**History.** Acts 1959, No. 148, § 85; A.S.A. 1947, § 66-2504; Acts 2001, No. 1566, § 6.

**23-63-605 — 23-63-609. [Repealed.]**

**Publisher's Notes.** These sections, concerning unearned premium reserves, reserves for disability insurance, loss reserves, and the increase of inadequate reserves, were repealed by Acts 2001, No. 1566, § 7. These sections were derived from the following sources:

23-63-605. Acts 1959, No. 148, § 86; A.S.A. 1947, § 66-2505.

23-63-606. Acts 1959, No. 148, § 87; A.S.A. 1947, § 66-2506.

23-63-607. Acts 1959, No. 148, § 88; A.S.A. 1947, § 66-2507.

23-63-608. Acts 1959, No. 148, § 89; A.S.A. 1947, § 66-2508.

23-63-609. Acts 1959, No. 148, § 90; A.S.A. 1947, § 66-2509.

**23-63-610. Assets — Conflict of treatment in subchapters in Arkansas Insurance Code.**

In the event of a conflict as to treatment of assets between § 23-63-601 et seq. and § 23-63-801 et seq., § 23-63-601 et seq. shall govern.

**History.** Acts 1959, No. 148, § 91; A.S.A. 1947, § 66-2510; Acts 2001, No. 1566, § 8.

**23-63-611. Asset valuation.**

Assets of reporting entities shall be valued in accordance with the following:

(1) Bonds and securities shall be valued in accordance with the methods specified in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the



“Valuation of Securities Manual”, prepared by the Securities Valuation Office;

(2) Shares of stock shall be valued in accordance with the methods specified in the National Association of Insurance Commissioners’ publication as it existed on January 1, 2001, entitled the “Accounting Practices and Procedures Manual”; and

(3) Other assets shall be valued as specified by the Insurance Commissioner in a rule and regulation, in accordance with the provisions of § 23-63-601(2), which method of valuation is not inconsistent with the National Association of Insurance Commissioners’ publication as it existed on January 1, 2001, entitled the “Valuation of Securities Manual”, prepared by the Securities Valuation Office.

**History.** Acts 1959, No. 148, §§ 93, 94; A.S.A. 1947, §§ 66-2512, 66-2513; Acts 1995, No. 1272, § 13; 2001, No. 1566, § 9.

### **23-63-612. Purpose — Compliance date.**

(a) It is the intention of this act to allow the Insurance Commissioner to adopt rules to modernize and harmonize the financial accounting laws of this state governing assets and liabilities of domestic reporting entities as defined. This act requires domestic health maintenance organizations, domestic title insurers, and other types of domestic licensees to modernize financial accounting methods in order to comply with laws and rules of the state applicable to domestic insurance companies and reporting entities. The provisions of this act are designed to allow domestic licensees to compete in the financial and insurance markets with changing federal and state laws, particularly those dealing with the treatment of assets, liabilities, and financial accounting.

(b) The provisions of this act are intended to and shall govern the financial reports for the year 2001 of domestic reporting entities and shall govern the annual report for the year 2001 of domestic reporting entities due at the State Insurance Department on and after March 1, 2002, and supported by quarterly reports of 2001 for the first three (3) quarters. The provisions of this act shall govern as to all quarterly and annual financial reports due in subsequent reporting periods.

(c) This act shall govern:

- (1) Domestic stock and mutual insurers;
- (2) Domestic reciprocal and stipulated premium plan insurers;
- (3) Domestic mutual assessment life and disability insurers;
- (4) Domestic farmers’ mutual aid associations or companies;
- (5) Domestic title insurers;
- (6) Domestic health maintenance organizations;
- (7) Domestic hospital or medical service organizations;
- (8) Domestic licensed casualty insurers transacting business as a risk retention group; or
- (9) Other domestic reporting entities as used in this act.

(d) Provided, however, if the immediate application of this act would have the effect of reducing any domestic reporting entity's statutory surplus, whether due to the nonadmission or reduction in admissible value of any then-existing asset or an increase in its then-existing liabilities or other changes, the domestic reporting entity may continue to reflect such assets and liabilities on its statutory financial statements as they could have been reflected but for the enactment of this act until the annual statement filing for the year ending December 31, 2004.

**History.** Acts 1959, No. 148, § 95; 1566, codified as §§ 23-63-202, 23-63-601 A.S.A. 1947, § 66-2514; Acts 1995, No. — 23-63-613, 23-64-405, 23-71-105, 23-72-1272, § 14; 2001, No. 1566, § 10. 103, 23-73-104, 23-81-130, 23-91-216.

**Meaning of "this act".** Acts 2001, No.

### **23-63-613. Use of new and revised manuals — Rule-making authority.**

(a)(1) The Insurance Commissioner is authorized to employ the standards and requirements set forth in publications recited in this subchapter and adopted and published by the National Association of Insurance Commissioners, including, but not limited to, those listed in this subchapter.

(2) The publications identified in subdivision (a)(1) of this section are hereby adopted in their present form as of August 13, 2001.

(3) The commissioner is authorized and empowered to promulgate regulations for the purposes of adopting all or part of other financial standards publications of the National Association of Insurance Commissioners or publications by other authors if the commissioner determines that such an action is in the best interest of the public.

(4) Upon mailing of written notice by the commissioner to all domestic reporting entities of the promulgation and publication by the National Association of Insurance Commissioners or other authors of amendments, revisions, or modifications to any publication previously adopted by the commissioner in this subchapter, such published amendments, revisions, or modifications shall become effective on the date designated by the commissioner in the written notice, which date shall not be earlier than eight (8) months after the date of mailing of the notice.

(b) The commissioner is authorized and empowered to adopt financial standards regulations for the purpose of modifying, amending, or revising any publication promulgated by the National Association of Insurance Commissioners or other authors, or any published amendments, modifications, or revisions to any such publications if the commissioner determines that such an action is in the best interest of the public. In this event, the effective date of any modification, amendment, or revision shall be the effective date of the regulation.

**History.** Acts 1959, No. 148, § 96;  
A.S.A. 1947, § 66-2515; Acts 1995, No.  
1272, § 15; 2001, No. 1566, § 11.

### **23-63-614. Domestic title insurance and aviation title insurance reserves.**

(a) In addition to an adequate reserve as to outstanding losses, a domestic title insurer shall maintain its own guaranty fund or unearned premium reserve of no less than ten percent (10%) of the total amount of the risk premium written in the calendar year for title insurance contracts, which shall be assigned originally to the reserve.

(b)(1) During each of the twenty (20) years after the year in which a title insurance contract was issued, the reserve applicable to the contract may be reduced by five percent (5%) of the original amount of the reserve.

(2) This section does not apply to foreign or alien title or aviation title insurers licensed in this state.

**History.** Acts 2003, No. 1787, § 1.

## **SUBCHAPTER 7 — LIMIT OF RISK**

### **SECTION.**

#### **23-63-701. Limit of risk.**

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**Effective Dates.** Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of

this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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#### **23-63-701. Limit of risk.**

(a) No insurer shall retain any risk on any one (1) subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent (10%) of its surplus to policyholders. Provided, with the prior approval of the Insurance Commissioner, such a limitation shall not apply to a subject of insurance controlled by the insurer or owned by an affiliate of the insurer.

(b) A "subject of insurance" for the purposes of this section as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic hazards includes all properties insured by the same insurer which are customarily considered by underwriters to be



subject to loss or damage from the same fire or the same occurrence of the other hazard insured against.

(c) Reinsurance ceded as authorized by §§ 23-62-202, 23-62-204, and 23-62-205 shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(d) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

(e) "Surplus to policyholders", for the purpose of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law and shall be determined from the last sworn statement of the insurer on file with the commissioner, or by the last report of examination of the insurer, whichever is the more recent at the time of assumption of risk.

(f) This section shall not apply to life insurance, disability insurance, title insurance, annuities, insurance of wet marine and foreign trade insurance risks, workers' compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

**History.** Acts 1959, No. 148, § 80; A.S.A. 1947, § 66-2409; Acts 1989, No. 772, § 3; 2009, No. 726, § 19.

**Amendments.** The 2009 amendment deleted (g).

## SUBCHAPTER 8 — INVESTMENTS

### SECTION.

- 23-63-801. Applicability.
- 23-63-802. Eligible investments.
- 23-63-803. General qualifications.
- 23-63-804. Authorization of investment.
- 23-63-805. Diversification of investments.
- 23-63-806. United States Government obligations.
- 23-63-807. Loans guaranteed by United States.
- 23-63-808. Investments in public obligations.
- 23-63-809. Municipal or county utilities.
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- 23-63-811. Local industrial development bonds.
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- 23-63-813. International banks.
- 23-63-814. Corporate bonds and debentures.

### SECTION.

- 23-63-815. Preferred or guaranteed stock.
- 23-63-816. Common stocks.
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- 23-63-818. Stocks of subsidiaries.
- 23-63-819. Equipment trust certificates.
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- 23-63-824. Foreign securities.
- 23-63-825. Additional investment authority.
- 23-63-826. Real estate mortgages.
- 23-63-827. Chattel mortgages.
- 23-63-828. Real estate.
- 23-63-829. Time limit for disposal of real estate.
- 23-63-830. Time limit for disposal of other ineligible property and securities.

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- 23-63-831. Failure to dispose of real estate, property, or securities.
- 23-63-832. Special investments by title insurer.
- 23-63-833. Prohibited investments.
- 23-63-834. Cancellation of treasury stock.
- 23-63-835. Investments of foreign insurers.
- 23-63-836. Certificates of deposit.

## SECTION.

- 23-63-837. Property and facilities for fossil or synthetic fuel production.
- 23-63-838. [Repealed.]
- 23-63-839. Negotiable bills of exchange or time drafts.
- 23-63-840. Collateralized mortgage obligations.
- 23-63-841. Derivative transactions.

**Effective Dates.** Acts 1961, No. 466, § 13: Mar. 16, 1961. Emergency clause provided: "It has been found, and is hereby declared, that the use of the 1958 mortality tables authorized under this act, which tables take account of the improvement in the life expectancy of the American people since the 1941 table was developed, will greatly reduce the need for deficiency reserves required under current tables and will result in keeping down the cost of life insurance; and that since use of the 1958 mortality tables has already been approved in 31 states and will probably be approved by the remaining states during their current or next legislative session, prompt enactment of this Act is desirable so that policies may be issued on a uniform basis in all such states. Therefore, an emergency is hereby declared to exist and, this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its passage and approval."

Acts 1971, No. 293, § 5: Mar. 15, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that stock market conditions from time to time present situations in which an insurer's capital stock is underpriced, making the purchase of its stock by the insurer highly desirable from the viewpoints of both the insurer's stockholders and its policyholders, and that only by the immediate passage and effectiveness of this Act can insurers be empowered to act to the best interests of its stockholders and policyholders in such situations. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of public peace, health and safety, shall be in full force and

effect from and after its passage and approval."

Acts 1973, No. 177, § 2: Feb. 23, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the public interest that additional sources of financing for single-family mortgage loans be provided for young and low-income families and that there is a need for private investment participation in this area in addition to, and in supplement of, existing government programs, and that immediate passage of the Act is necessary in order to provide for the adequate supply of funds to provide improved and decent housing for the citizens of this State. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 216, § 7: Feb. 18, 1975. Emergency clause provided: "In order that the Farm Credit System can continue to provide farm credit to Arkansas farmers and improve agricultural conditions in Arkansas, an emergency is declared to exist and this Act shall take effect and be in full force from and after its passage and approval."

Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety,



shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 800, § 5: Mar. 24, 1983. Emergency clause provided: “It has been found that the present laws governing investment by Arkansas insurance companies should be clarified in order that needed and useful real estate projects may be financed and that the clarification effected by this Act will permit these projects to go forward as required. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon passage and approval.”

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act.”

Acts 1993, No. 527, § 20: Mar. 16, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1604, § 39, provided: “The provisions of this act which amend Subchapter 8 of Chapter 63 of Title 23 of the Arkansas Code shall become effective on October 1, 2001.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”



Acts 2009, No. 726, § 48: Mar. 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the state of the economy has made it more important for insurance companies to find appropriate investments; that in certain cases an investment in an insurance company's subsidiary may be a prudent investment option for an insurance company, but the opportunity for the investment is available only for a limited time as economic circumstances permit; and that Section 20 of this act is immediately necessary to permit the timely investment in an insur-

ance company's subsidiary when considered appropriate by the Insurance Commissioner. Therefore, an emergency is declared to exist and Section 20 of this act being immediately necessary for the preservation of the public peace, health, and safety, Section 20 of this act shall become effective on: (1) The date of this act's approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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### **23-63-801. Applicability.**

Except as to § 23-63-835, the provisions of this subchapter shall apply to domestic insurers only.

**History.** Acts 1959, No. 148, § 97; A.S.A. 1947, § 66-2601; Acts 1993, No. 527, § 4.

### **23-63-802. Eligible investments.**

(a) Insurers shall invest in, or lend their funds on the security of, and shall hold as invested assets only eligible investments as prescribed in this subchapter.

(b) Any particular investment held by an insurer on January 1, 1960, and which was a legal investment at the time it was made, or which the insurer was legally entitled to possess immediately prior to January 1, 1960, shall be deemed to be an eligible investment.

(c) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (b) of this section.

(d) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31 next preceding the date of acquisition of the investment by the insurer, or as shown by a current financial statement filed with the commissioner.

(e) None of the requirements, restrictions, limitations, or prohibitions for investments made under this subchapter, or contained in any regulation promulgated pursuant thereto, shall be preempted by the provisions of section 106 of Title 1 of the Secondary Mortgage Market Enhancement Act of 1984. The provisions of this subchapter and any regulations promulgated pursuant thereto that pertain to investments in the categories of securities specified in paragraphs (1) and (2) of subsection (a) of the Secondary Mortgage Market Enhancement Act

shall remain in full force and effect notwithstanding the enactment of the Secondary Mortgage Market Enhancement Act.

**History.** Acts 1959, No. 148, § 98; Secondary Mortgage Market Enhancement Act of 1984, referred to in this section, is codified as 15 U.S.C. § 77r-1.  
A.S.A. 1947, § 66-2602; Acts 1991, No. 1123, § 1; 1993, No. 527, § 5.

**U.S. Code.** Section 106 of Title I of the

### 23-63-803. General qualifications.

(a) Without prior written approval of the Insurance Commissioner, no security or investment, other than real and personal property acquired under § 23-63-828, concerning real estate, shall be eligible for acquisition unless it is interest-bearing, with the accrued interest being paid annually or more frequently than annually, or dividend or income-paying, or is held for income purposes, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(b) No provision of this subchapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under this subchapter shall be disposed of pursuant to § 23-63-830 if personal property or securities, or pursuant to § 23-63-829 if real property.

**History.** Acts 1959, No. 148, § 99;  
A.S.A. 1947, § 66-2603; Acts 1987, No. 456, § 10; 1993, No. 527, § 6.

### CASE NOTES

**Cited:** Mid-South Ins. Co. v. First Nat'l Bank, 241 Ark. 935, 410 S.W.2d 873 (1967).

### 23-63-804. Authorization of investment.

(a) An insurer shall not make any investment or loan, other than policy loans or annuity contract loans of a life insurer, unless the insurer is authorized or approved by the insurer's board of directors or by a committee authorized by the board and charged with the supervision or making of the investment or loan.

(b) The minutes of the committee shall be recorded and regular reports of the committee shall be submitted to the board of directors.

**History.** Acts 1959, No. 148, § 100;  
A.S.A. 1947, § 66-2604.

**23-63-805. Diversification of investments.**

An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) ONE PERSON.

(A)(i)(a) Except with the consent of the Insurance Commissioner and except as otherwise specified in this subchapter, an insurer shall not have, directly or indirectly through an investment subsidiary, an investment under this subchapter if, as a result of and after giving effect to the investment, the insurer holds more than five percent (5%) of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person or five percent (5%) of its admitted assets in investments in the voting securities of a depository institution or any company that controls the institution.

(b) The five percent (5%) limitation under subdivision (1)(A)(i)(a) of this section shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(ii)(a) Investments in certificates of deposit and savings and loan association deposits in any one (1) person may be the greater of:

(1) Ten percent (10%) of the insurer's assets; or

(2) The maximum amount of federal insurance applicable to the deposit.

(b) The restriction under subdivision (1)(A)(ii)(a) of this section shall not apply as to general obligations of the United States or of any state or include policy loans made under § 23-63-821.

(iii) The applicable limitation shall be twenty-five percent (25%) rather than five percent (5%) for investments permitted under § 23-63-812.

(B) If upon enactment, the immediate application of this provision would have the effect of reducing the admitted asset value of assets held by a particular insurer, the insurer may continue to reflect as admitted those assets that would be admissible but for the enactment of this provision, until the annual statement filing for the year ended December 31, 2004;

(2) MINIMUM CAPITAL. An insurer, other than a title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under the Arkansas Insurance Code of a domestic stock insurer transacting like kinds of insurance only in cash and the securities provided for under §§ 23-63-806, 23-63-808, and 23-63-826;

(3) LIFE INSURANCE RESERVES. A life insurer shall also invest and keep invested its funds in amount not less than seventy-five percent (75%) of the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force, in cash, securities, or investments allowed under this subchapter, other than stocks of subsidiaries of the insurer;



(4) **COMMON STOCKS.** An insurer, other than a life insurer, may invest and have invested at any one (1) time an aggregate amount not more than twenty-five percent (25%) of its assets in all stocks under § 23-63-816 concerning common stocks, § 23-63-817 concerning insurance stocks, and § 23-63-820 concerning investment trust securities. A life insurer may so invest and have invested in the stocks no more than ten percent (10%) of its assets. This provision shall not apply as to stock of a controlled or subsidiary insurance corporation or other corporation under § 23-63-817 or § 23-63-818, or as to variable annuities;

(5) **MISCELLANEOUS.** Except with the commissioner's consent, an insurer shall not have invested at any one (1) time more than twenty percent (20%) of its assets in the class of securities described in §§ 23-63-815 and 23-63-819;

(6) **OTHER SPECIFIC LIMITS.** Limits as to investments in the category of real estate shall be as provided in § 23-63-828. Other specific limits shall apply as stated in the sections dealing with other respective kinds of investments; and

(7) **LIMITATIONS ON ACQUISITIONS AND INVESTMENTS.** Notwithstanding any other provision of this subchapter to the contrary:

(A)(i) No insurer shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the domestic insurer would exceed twenty percent (20%) of its admitted assets, provided that no more than ten percent (10%) of its admitted assets consist of obligations rated four (4), five (5), or six (6) by the Securities Valuation Office of the National Association of Insurance Commissioners, and no more than three percent (3%) of its admitted assets consist of obligations rated five (5) or six (6) by the Securities Valuation Office, and no more than one percent (1%) of its admitted assets consist of obligations rated six (6) by the Securities Valuation Office. Attaining or exceeding the limit of any one (1) category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multicategory limits.

(ii)(a) No insurer may invest more than an aggregate of one percent (1%) of its admitted assets in medium grade obligations issued, guaranteed, or insured by any one (1) person or institution, nor may it invest more than one-half of one percent (0.5%) of its admitted assets in lower grade obligations issued, guaranteed, or insured by any one (1) person or institution.

(b) In the case of a downgrade of securities held by an insurer, the commissioner may grant temporary relief from the investment limitations on medium grade obligations and lower grade obligations.

(iii) An insurer may acquire an obligation of an institution in which the insurer already has one (1) or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution. Provided, that all such acquired obligations shall not exceed one-half of one percent (0.5%) of the insurer's admitted assets.

(iv) Nothing contained in this subdivision (7):

(a) Shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this subchapter on the date on which the insurer committed to purchase that obligation;

(b) Shall prohibit an insurer from acquiring an obligation as a result of restructuring of a medium or lower grade obligation already held; or

(c) Shall require an insurer to sell or otherwise dispose of any obligation legally acquired prior to March 16, 1993.

(v)(a) The board of directors of any insurer which acquires or invests, directly or indirectly, more than two percent (2%) of its admitted assets in medium grade and lower grade obligations of any institution shall adopt a written plan for the making of such investments.

(b) The plan, in addition to the guidelines with respect to the quality of the issues invested in, shall contain diversification standards, including, but not limited to, standards for issuer, industry, duration, liquidity, and geographic location; and

(B) For purposes of this subdivision (7):

(i) "Admitted assets" means the amount thereof as of the last day of the most recently concluded annual statement year, computed in the same manner as admitted assets pursuant to § 23-63-601 et seq.;

(ii) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value thereof;

(iii) "Institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture, or similar entity;

(iv) "Lower grade obligations" means obligations which are rated five (5) or six (6) by the Securities Valuation Office; and

(v) "Medium grade obligations" means obligations which are rated three (3) or four (4) by the Securities Valuation Office.

**History.** Acts 1959, No. 148, § 101; 1981, No. 809, § 3; 1983, No. 522, § 7; A.S.A. 1947, § 66-2605; Acts 1993, No. 527, §§ 7, 8; 2001, No. 1604, § 35; 2005, No. 506, §§ 24-26.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

Acts 1983, No. 522, § 51, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

## CASE NOTES

**Cited:** *Garner v. Foundation Life Ins. Co.*, 17 Ark. App. 13, 702 S.W.2d 417 (1986).

**23-63-806. United States Government obligations.**

An insurer may invest in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States or for which the full faith and credit of the United States is pledged for the payment of principal and interest.

**History.** Acts 1959, No. 148, § 102;  
A.S.A. 1947, § 66-2606.

**23-63-807. Loans guaranteed by United States.**

An insurer may invest in loans guaranteed as to principal and interest by the United States, or by any agency or instrumentality of the United States, to the extent of the guaranty.

**History.** Acts 1959, No. 148, § 103;  
A.S.A. 1947, § 66-2607.

**23-63-808. Investments in public obligations.**

(a) An insurer may invest in bonds or other evidences of indebtedness which are general obligations of, or are secured by pledge of specific revenue by, this state or any other state of the United States, or any of the counties or incorporated cities or towns, or duly organized school districts or other taxing districts of such states.

(b) No security shall be eligible for investment if within five (5) years next preceding the date of the proposed investment, the obligor has defaulted in the payment of principal or interest on any of its tax-supported obligations.

**History.** Acts 1959, No. 148, § 104;  
A.S.A. 1947, § 66-2608.

**23-63-809. Municipal or county utilities.**

An insurer may invest in bonds, notes, or evidences of indebtedness of any municipal or county utility within the United States or Canada, which are payable from revenues or earnings specifically pledged for the payment of the principal and interest on the obligations, and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained, but only if no default in payment of principal or interest on the obligations to be purchased has occurred within five (5) years of the investment.

**History.** Acts 1959, No. 148, § 105;  
A.S.A. 1947, § 66-2609.

**23-63-810. Improvement district obligations.**

(a) An insurer may invest in bonds, notes, or evidences of indebtedness issued by any local improvement district in this or any other state



to finance local improvements authorized by law if the principal and interest of the obligations is payable from assessments on real property within the local improvement district.

(b) No investment shall be made if the face value of all obligations, together with all similar obligations of the improvement district outstanding, exceeds fifty percent (50%) of the market value of the real property and improvements upon which the bonds or the assessments for the payment of principal and interest thereon are liens inferior only to the liens for general ad valorem property taxes.

(c) No investment shall be made unless no default in payment of principal or interest on the obligations to be purchased has occurred within five (5) years of the date of investment therein, or, if the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on any of the obligations of the issuer within five (5) years of the investment.

**History.** Acts 1959, No. 148, § 106;  
A.S.A. 1947, § 66-2610.

### **23-63-811. Local industrial development bonds.**

An insurer may invest in the negotiable first-lien bonds issued by local industrial development corporations organized under the Arkansas Industrial Development Act, § 15-4-101 et seq.

**History.** Acts 1959, No. 148, § 107;  
A.S.A. 1947, § 66-2611.

### **23-63-812. Obligations or stock of certain federal agencies.**

An insurer may invest in the obligations, or stock where stated, of the following agencies of the United States Government, whether or not the obligations are guaranteed by the government:

- (1) Commodity credit corporation;
- (2) Notes, bonds, debentures, or other similar obligations issued by the Federal Land Banks, Federal Intermediate Credit Banks, or Banks for Cooperatives, or any other obligations issued pursuant to the provisions of an act of Congress known as the Farm Credit Act of 1971 and acts amendatory thereto;
- (3) Federal home loan banks, and stock thereof;
- (4) Federal National Mortgage Association, and stock thereof, when acquired in connection with the sale of mortgage loans to the association; and
- (5) Any other similar agency of the United States Government and of similar financial quality.

**History.** Acts 1959, No. 148, § 108;  
1975, No. 216, § 3; A.S.A. 1947, § 66-2612.

**U.S. Code.** The Farm Credit Act of 1971, referred to in this section, is codified as 12 U.S.C. § 2001 et seq.

**23-63-813. International banks.**

Any insurer may invest in obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, or the African Development Bank.

**History.** Acts 1959, No. 148, § 109;  
1971, No. 719, § 1; 1985, No. 943, § 2;  
A.S.A. 1947, § 66-2613.

**23-63-814. Corporate bonds and debentures.**

(a) An insurer may invest in bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent institution existing under the laws of the United States or of Canada, or any state or province thereof, which are not in default as to principal or interest and which are secured by collateral worth at least fifty percent (50%) more than the par value of the entire issue of such obligations, but only if not more than one-third ( $\frac{1}{3}$ ) of the total value of the required collateral consists of common stock.

(b) An insurer may invest in secured and unsecured obligations of the institutions, other than obligations described in subsection (a) of this section bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five (5) fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half ( $1\frac{1}{2}$ ) times its average annual fixed charges applicable to the period and if, during either of the last two (2) years of the period, the net earnings have been not less than one and one-half ( $1\frac{1}{2}$ ) times its fixed charges for the year.

**History.** Acts 1959, No. 148, § 110;  
A.S.A. 1947, § 66-2614.

**23-63-815. Preferred or guaranteed stock.**

(a) An insurer may invest in preferred or guaranteed stocks or shares of any solvent institution existing under the laws of the United States or of Canada, or of any state or province thereof, if all of the prior obligations and prior preferred stocks, if any, of the institution at the date of the acquisition of the investment by the insurer are eligible as investments under this subchapter and if the net earnings of the institution available for its fixed charges during each of the last two (2) years have been, and during each of the last five (5) years have averaged, not less than one and one-half ( $1\frac{1}{2}$ ) times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements.

(b) For the purposes of this section, the computation shall refer to the fiscal years immediately preceding the date of acquisition of the investment by the insurer, and the term “preferred dividend requirement” shall be deemed to mean cumulative or noncumulative dividends, whether paid or not.

**History.** Acts 1959, No. 148, § 111; A.S.A. 1947, § 66-2615; Acts 1993, No. 527, § 9.

### **23-63-816. Common stocks.**

An insurer may invest in nonassessable, except for taxes and wages, common stocks other than insurance stocks of solvent United States or Canadian corporations that qualify as a sound investment.

**History.** Acts 1959, No. 148, § 112; A.S.A. 1947, § 66-2616.

### **23-63-817. Insurance stocks.**

(a) An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state if the stocks meet the applicable requirements of § 23-63-815 as to preferred or guaranteed stock or § 23-63-816 as to common stock, and, with the advance consent of the Insurance Commissioner, an insurer may invest in issued shares of its own capital stock, provided that these investments shall only be made from the insurer’s earned surplus. Investments by an insurer in its own capital stock in accordance with the provisions of this section may be made by pro rata purchase from the insurer’s shareholders or on a non-pro rata basis, at the election of the insurer.

(b) With the commissioner’s consent, an insurer may acquire and hold the controlling interest in the outstanding voting stock of another stock insurer formed under the laws of this or another state. All stocks under this subsection shall be subject to the limitation as to amount as provided in § 23-63-818.

**History.** Acts 1959, No. 148, § 113; 1971, No. 293, § 1; A.S.A. 1947, § 66-2617.

### **23-63-818. Stocks of subsidiaries.**

(a) With the Insurance Commissioner’s written approval, a domestic insurer may invest in the stock of its wholly owned subsidiary insurance corporation or in the stock of its wholly owned subsidiary business corporation formed or acquired for and necessary and incidental to:

(1) The convenient operation of the domestic insurer’s insurance business; or

(2) The administration of any of the domestic insurer’s lawful investments.



(b) Unless a greater investment has been approved in writing by the commissioner:

(1) All of the domestic insurer's investments under this section together with its investments in insurance stocks under § 23-63-817(b) shall not at any time exceed:

(A) The domestic insurer's surplus if a life insurer; or

(B) The domestic insurer's policyholders' surplus if other than a life insurer; and

(2)(A) A domestic insurer subject to this subchapter shall limit its investments in common stock, preferred stock, debt obligations, and other securities of its noninsurance subsidiaries to the lesser of:

(i) Ten percent (10%) of the domestic insurer's assets; or

(ii) Fifty percent (50%) of the domestic insurer's surplus.

(B) This subdivision (b)(2) does not apply to the amount of an investment held on July 31, 2007, by a domestic insurer licensed in Arkansas.

(c) With the prior written approval of the commissioner, a domestic insurer may invest any amount in the securities of one (1) or more of the domestic insurer's subsidiaries if after the investment the domestic insurer's policyholders' surplus is:

(1) Reasonable in relation to the domestic insurer's outstanding liabilities; and

(2) Adequate for the domestic insurer's financial needs.

(d) An investment that exceeds the scope of an approval granted under this section requires the additional prior written approval of the commissioner.

**History.** Acts 1959, No. 148, § 114; A.S.A. 1947, § 66-2618; Acts 2007, No. 496, § 11; 2009, No. 726, § 20.

**Amendments.** The 2007 amendment added (c).

The 2009 amendment redesignated (a) through (c) and made minor stylistic changes throughout the section; and added (d).

## CASE NOTES

### Evidence.

Commissioner's decision not to allow company to sell group life insurance through a wholly owned subsidiary to sub-

scriber groups was supported by substantial evidence. *Woodyard v. Arkansas Diversified Ins. Co.*, 268 Ark. 94, 594 S.W.2d 13 (1980).

## 23-63-819. Equipment trust certificates.

An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of transportation equipment.

**History.** Acts 1959, No. 148, § 115; A.S.A. 1947, § 66-2619.

**23-63-820. Investment trust securities.**

An insurer may invest in the securities of any management-type investment company or investment trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended, if the investment company or trust has been organized for not less than two (2) years and has assets not less than fifty million dollars (\$50,000,000) at the date of investment by the insurer.

**History.** Acts 1959, No. 148, § 116; 1983, No. 522, § 8; A.S.A. 1947, § 66-2620.

**U.S. Code.** The Investment Company Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80a-1 et seq.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-63-805.

**23-63-821. Policy loans.**

(a) A life insurer may lend to its policyholder upon pledge of the policy as collateral security any sum not exceeding the cash surrender value of the policy or may lend against pledge or assignment of any of its supplementary contracts or its other contracts or obligations, so long as the loan is adequately secured by the pledge or assignment.

(b) Loans so made are eligible investments of the insurer.

**History.** Acts 1959, No. 148, § 117; A.S.A. 1947, § 66-2621.

**23-63-822. Collateral loans.**

(a) An insurer may lend and invest its funds upon the pledge of securities eligible for investment under this subchapter.

(b) As at date made, no loan shall exceed in amount ninety percent (90%) of the market value of such collateral pledged.

(c) The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this subchapter to be invested in the respective categories of securities so pledged.

**History.** Acts 1959, No. 148, § 118; A.S.A. 1947, § 66-2622; Acts 1993, No. 527, § 10.

**23-63-823. Savings and loan associations.**

To the extent that an account does not exceed an amount equal to the sum of all reserve accounts, except specific or valuation reserves, undivided profits, surplus, and capital stock, but not including the proceeds of capital notes, debentures, or similar obligations, an insurer may invest in share or savings accounts of savings or building and loan associations.

**History.** Acts 1959, No. 148, § 119; 1979, No. 367, § 1; A.S.A. 1947, § 66-2623.

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Strother, Survey of Insurance Law, 3 U. Ark. Little Rock L.J. 242.

#### **23-63-824. Foreign securities.**

(a) An insurer may make investments, in aggregate amounts not exceeding five percent (5%) or, with prior approval of the Insurance Commissioner, ten percent (10%) of its assets, and not over three percent (3%) of its assets in any one (1) investment, in securities of or in a foreign country possessing characteristics and of a quality similar to the investment required pursuant to §§ 23-63-801, 23-63-833, and 23-63-835 for investments in the United States.

(b) Canadian securities eligible for investment under other provisions of this subchapter are not subject to this section.

**History.** Acts 1959, No. 148, § 120; A.S.A. 1947, § 66-2624; Acts 1991, No. 1123, § 20; 1993, No. 527, § 11.

#### **23-63-825. Additional investment authority.**

(a)(1) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this subsection or elsewhere in the Arkansas Insurance Code, or engage in investment practices, without regard to any aggregate limitation in this subchapter, but an insurer shall not admit an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the lesser of:

(A) Ten percent (10%) of its admitted assets; or

(B) Seventy-five percent (75%) of its total capital and surplus.

(2) This additional authority shall not apply to the following investments:

(A) Medium grade or lower grade-rated credit instruments;

(B) Mortgages or mortgage loans;

(C) Total of real estate, both home office and real estate held for investment income, except with the Insurance Commissioner's advance approval;

(D) Foreign investments and foreign currency exposures; and

(E) Derivatives.

(3) As used in subsection (a) of this section, "insurer" means licensed domestic life and/or accident and health insurers or other licensed



domestic reporting entities which transact life and/or accident or health contracts or plans in this state.

(b)(1) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this subchapter, or engage in investment practices, without regard to any aggregate limitation in this subchapter, but an insurer shall not admit an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the lesser of:

(A) Ten percent (10%) of its admitted assets; or

(B) Seventy-five percent (75%) of its total capital and surplus.

(2) This additional authority shall not apply to the following investments:

(A) Medium grade or lower grade-rated credit instruments;

(B) Equity interests;

(C) Mortgages or mortgage loans;

(D) Total of real estate, both home office and real estate held for investment income, except with the commissioner's advance approval;

(E) Foreign investments and foreign currency exposures; and

(F) Derivatives.

(4) As used in subsection (b) of this section, "insurer" means domestic property, casualty, surety and/or marine, financial guaranty, and mortgage guaranty insurers, and domestic insurers transacting title insurance.

(c) If upon enactment, the immediate application of the provisions of this section would have the effect of reducing the admitted asset value of assets held by a particular insurer, the insurer may continue to reflect as admitted those assets that would be admissible but for the enactment of the provisions of this section, until December 31, 2004.

**History.** Acts 1959, No. 148, § 121; 1983, No. 522, § 9; 1985, No. 804, § 29; A.S.A. 1947, § 66-2625; Acts 1993, No. 527, § 12; 2001, No. 1604, § 36.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

For cumulative effect of 1983 amend-

ment to this section, see Publisher's Notes to § 23-63-805.

Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

## 23-63-826. Real estate mortgages.

(a)(1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than twenty-one (21)

years, inclusive of the terms which may be provided by enforceable options of renewal, in improved real property located in the United States.

(2) Investments made under this section may be effected by acquisition or by agreement to acquire, in the form of a guaranty, credit draw arrangement, or other like form.

(3) In all cases the security for the loan must be a first lien upon the real property, and there must not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, the lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan.

(4) Nothing in this subsection shall prohibit any investment by reason of the existence of any prior lien for grounds rents, taxes, assessments, or other similar charges not yet delinquent.

(5) This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under § 23-63-824 as to foreign securities.

(b) "Improved real estate" means all farmlands used for tillage, crop or pasture, timberlands, and all real estate on which permanent improvements suitable for residence, institutional, commercial, or industrial use are, or are being, situated.

(c)(1) No mortgage loan made or acquired by an insurer on any one (1) property shall, at the time of investment by the insurer, exceed the larger of the following amounts, as applicable:

(A) Three-fourths ( $\frac{3}{4}$ ) of the value of real property or leasehold securing the loan;

(B) The amount of any insurance or guaranty of the loan by the United States or by any agency or instrumentality thereof or, with respect to single-family dwellings, by a mortgage insurance company authorized to transact business in this state; or

(C) Three-fourths ( $\frac{3}{4}$ ) of the value of the real property or leasehold securing the loan, plus the amount by which the excess of the loan over the three-fourths ( $\frac{3}{4}$ ) is insured or guaranteed by the United States or by any agency or instrumentality thereof or, with respect to single-family dwellings, by a mortgage insurance company authorized to transact such business in this state.

(2) Except that, in the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.

(d) No mortgage loan shall be made or acquired by an insurer except after an appraisal has been made by a competent appraiser for the purpose of the investment.

(e) No mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this section unless

the entire series or issue which is secured by the same mortgage or deed of trust is held by the insurer or unless the insurer holds a participation in such a mortgage or deed of trust, giving it and other holders of the issue substantially the rights of a first mortgagee.

(f) No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to amortize the loan completely within a period of four-fifths ( $\frac{4}{5}$ ) of the term of the leasehold, inclusive of the terms which may be provided by enforceable options of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty-five (35) years.

**History.** Acts 1959, No. 148, § 122; 1983, No. 800, § 1; A.S.A. 1947, § 66-1961, No. 466, § 8; 1973, No. 177, § 1; 2626.

### **23-63-827. Chattel mortgages.**

(a) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to § 23-63-826, an insurer may lend or invest an amount not exceeding twenty percent (20%) of the amount loaned on or invested in the real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than five (5) years and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(b) For the purposes of this section, the term "durable equipment" shall include only mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses and hotels, room furniture and furnishings.

(c)(1) Prior to the acquisition of a chattel mortgage pursuant to this section, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined.

(2) No chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(d) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this subchapter.

**History.** Acts 1959, No. 148, § 123; A.S.A. 1947, § 66-2627; Acts 1993, No. 527, § 13.



**23-63-828. Real estate.**

An insurer may invest in real estate only if used for the purposes or acquired in the manner and within the limits as follows:

(1) The land and the buildings thereon in which it has its principal office and such other real estate as shall be requisite for its convenient accommodation in the transaction of its business. Except with the consent of the Insurance Commissioner, all the investments shall not aggregate more than ten percent (10%) of the insurer's assets;

(2) Real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer in the course of business;

(3) Real estate acquired in part payment of the consideration on the sale of other real estate owned by it, if the transaction shall have effected a net reduction in the insurer's investment in real estate;

(4) Real estate acquired by gift or devise, or through merger, consolidation, or bulk reinsurance of another insurer under this code;

(5) The seller's interest in real property subject to an agreement of purchase or sale, but the sum invested in any parcel of real estate shall not exceed two-thirds ( $\frac{2}{3}$ ) of the market value of the parcel;

(6) Real estate, or any interest therein acquired or held by purchase, lease, or otherwise, as an investment for the production of income, or acquired to be improved or developed for investment purposes pursuant to an existing program therefor. The insurer may hold, improve, develop, maintain, manage, lease, sell, and convey real estate acquired by it under this provision. An insurer shall not have invested at any one (1) time an amount exceeding ten percent (10%) of its assets in real estate under this subdivision (6), except with the commissioner's consent;

(7) Additional real estate, and equipment incidental to real estate, if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under subdivision (2), subdivision (3), subdivision (4), or subdivision (6) of this section. The real estate and equipment shall be included, together with the real estate for the enhancement of which it was acquired, for the purpose of applicable investment limits, and shall be subject to disposal at the same time and under the same conditions as apply to enhanced real estate under § 23-63-819;

(8) Investments made under this section may be effected by acquisition or by agreement to acquire, in the form of a guaranty, credit draw arrangement, or other like form; and

(9) Except with the commissioner's consent, all real estate owned by the insurer under this section, except as to seller's interest specified in subdivision (5) of this section, shall not at any one (1) time exceed twenty percent (20%) of the insurer's assets.

**History.** Acts 1959, No. 148, § 124; 1983, No. 800, § 2; A.S.A. 1947, § 66-2628. **Meaning of "this code".** See note to § 23-60-101.

## CASE NOTES

**Noncompliance.**

The issuance of insurance company stock for cemetery lots was held illegal where the record showed no compliance with the conditions stated in this section.

Gwatney v. Allied Cos., 238 Ark. 962, 385 S.W.2d 940, 21 A.L.R.3d 958 (1965).

**Cited:** Garner v. Foundation Life Ins. Co., 17 Ark. App. 13, 702 S.W.2d 417 (1986).

**23-63-829. Time limit for disposal of real estate.**

(a) Except as stated in subsection (c) of this section, the insurer shall dispose of real estate acquired under § 23-63-828(1) within five (5) years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.

(b) Except as stated in subsection (c) of this section, the insurer shall dispose of real estate acquired under § 23-63-828(2)-(4) within five (5) years after the date of acquisition.

(c) Upon proof satisfactory to the Insurance Commissioner that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period as specified in the order. Within that specified period of time, the insurer shall dispose of any particular parcel of real estate, unless the insurer elects to hold the real estate as an investment for income purposes under § 23-63-828(6), in which event, the real estate shall be deemed to have been acquired at a cost equal to its book value at the time of the election and to be held under, and subject to, the provisions of § 23-63-828(6) after that time.

**History.** Acts 1959, No. 148, § 125; A.S.A. 1947, § 66-2629.

**23-63-830. Time limit for disposal of other ineligible property and securities.**

(a) Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of the acquisition shall be disposed of within three (3) years from the date of acquisition, unless within that period the security has attained the status of eligibility.

(b) However, any security or personal property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for reinsurance, merger, or consolidation as approved by the Insurance Commissioner under the Arkansas Insurance Code.

(c) Upon application by the insurer and proof that forced sale of any property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

**History.** Acts 1959, No. 148, § 126; A.S.A. 1947, § 66-2630.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-831. Failure to dispose of real estate, property, or securities.**

(a) Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof, or any extension of the period granted by the Insurance Commissioner as provided in § 23-63-829 or § 23-63-830, or any investments otherwise lawful which are in excess of the aggregate amount the insurer is authorized to invest in that category of investments under this subchapter shall not be allowed as an asset of the insurer.

(b) The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the commissioner shall suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the investment within such reasonable time as the commissioner may, by order, specify.

**History.** Acts 1959, No. 148, § 127; A.S.A. 1947, § 66-2631; Acts 1993, No. 527, § 14.

### **23-63-832. Special investments by title insurer.**

(a)(1) In addition to other investments eligible under this subchapter, a title insurer may invest and have invested an amount not exceeding fifty percent (50%) of its paid-in capital stock in its abstract plant and equipment and, with the Insurance Commissioner's consent, in stocks of abstract companies.

(2) If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section, its paid-in capital stock shall be prorated between title insurance and other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance. However, the capital so assigned to title insurance shall in no event be less than one hundred thousand dollars (\$100,000).

(b) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided under § 23-63-614.

**History.** Acts 1959, No. 148, § 128; A.S.A. 1947, § 66-2632; Acts 1993, No. 527, § 15; 2007, No. 496, § 12.

**Amendments.** The 2007 amendment substituted "§ 23-63-614" for "§ 23-63-610" in (b).

### **23-63-833. Prohibited investments.**

In addition to investments excluded pursuant to other provisions of the Arkansas Insurance Code, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:



(1) Issued shares of its own capital stock, except for the purpose of mutualization under § 23-69-140 or with the advance consent of the Insurance Commissioner under § 23-63-817;

(2) Except with the advance consent of the commissioner, securities issued by any corporation or enterprise the controlling interest of which is held, or will be held after the acquisition by the insurer, directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under § 23-63-818 shall not be subject to this provision; or

(3) Any note or other evidence of indebtedness of any director, officer, employee, or controlling stockholder of the insurer, except as to policy loans authorized under § 23-63-821.

**History.** Acts 1959, No. 148, § 130; 1971, No. 293, § 2; A.S.A. 1947, § 66-2634.

insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

### **23-63-834. Cancellation of treasury stock.**

(a) By resolution of its board of directors, any legal reserve life insurance company may cancel at any time all or any part of its treasury shares.

(b)(1) In such an event, a statement of cancellation shall be filed as provided in this section.

(2) Any statement of cancellation shall be executed and filed in accordance with the provisions of § 23-69-107(c), shall be verified by one (1) of the officers signing the statement, and shall set forth:

(A) The name of the insurance company;

(B) The number of treasury shares cancelled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption;

(C) The aggregate number of issued shares, itemized by classes and series, after giving effect to the cancellation;

(D) The amount, expressed in dollars, of the paid-up capital of the insurance company, after giving effect to the cancellation; and

(E) A copy of the resolution effecting the cancellation.

(3) When a statement of cancellation is filed in accordance with § 23-69-107(c), the paid-up capital of the insurance company shall be deemed to be reduced by that part of the paid-up capital which was, at the time of the cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.

(c) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by § 23-69-107.

**History.** Acts 1971, No. 293, § 3; A.S.A. 1947, § 66-2634.1.

**23-63-835. Investments of foreign insurers.**

(a) The investments of a foreign or alien insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as those required under this subchapter for similar funds of like domestic insurers.

(b) For the purposes of this section, the domicile of an alien insurer shall be as provided in § 23-63-104.

**History.** Acts 1959, No. 148, § 131; A.S.A. 1947, § 66-2635; Acts 1993, No. 527, § 16.

**23-63-836. Certificates of deposit.**

An insurer may invest in certificates of deposit or similar depository instruments issued by any bank, bank and trust company, savings bank, national bank association, savings and loan association incorporated under the laws of a state, or federal savings and loan association incorporated under the laws of the United States.

**History.** Acts 1959, No. 148, § 131.1, as added by Acts 1983, No. 522, § 5; A.S.A. 1947, § 66-2636.

**Publisher's Notes.** For cumulative effect of Acts 1983, No. 522, see Publisher's Notes to § 23-63-805.

**23-63-837. Property and facilities for fossil or synthetic fuel production.**

(a) An insurer may invest in property and facilities, and any interests and rights in properties and facilities, for the development and production of fossil or synthetic fuel or other minerals, including, but not limited to, investments relating to:

(1) The exploration for and development and production of those fuels and minerals; and

(2) Ownership and control of the property, facilities, interests, and rights.

(b) Investment in property and facilities, and any interests and rights in the properties and facilities for the development and production of fossil or synthetic fuel or other minerals under this section shall not exceed two percent (2%) of the insurer's assets.

**History.** Acts 1959, No. 148, § 131.2, as added by Acts 1983, No. 522, § 6; A.S.A. 1947, § 66-2637.

**Publisher's Notes.** For cumulative effect of Acts 1983, No. 522, see Publisher's Notes to § 23-63-805.

**CASE NOTES**

**Cited:** *Garner v. Foundation Life Ins. Co.*, 17 Ark. App. 13, 702 S.W.2d 417 (1986).

**23-63-838. [Repealed.]**

**Publisher's Notes.** This section, concerning risk limiting and related provisions, was repealed by Acts 2005, No. 506, § 27. The section was derived from Acts

1959, No. 148, § 131.3, as added by Acts 1983, No. 522, § 45; A.S.A. 1947, § 66-2638; Acts 2001, No. 1604, § 37.

**23-63-839. Negotiable bills of exchange or time drafts.**

An insurer may invest in negotiable bills of exchange or time drafts issued and unconditionally guaranteed by any bank, bank and trust company, national bank association, or domestic branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978, as amended, provided that:

(1) The underlying transaction involves a trade financing and has a maturity no longer than six (6) months sight to run exclusive of days of grace;

(2) The insurer invests not more than twenty-five percent (25%) of its assets in bankers acceptances; and

(3) The insurer invests not more than ten percent (10%) of its assets in any one (1) bankers acceptance in any one (1) financial institution.

**History.** Acts 1989, No. 772, § 4.

this section is codified as 12 U.S.C.

**U.S. Code.** Section 7 of the International Banking Act of 1978 referred to in

§ 3105.

**23-63-840. Collateralized mortgage obligations.**

(a)(1) An insurer may invest in collateralized mortgage obligations provided that the underlying mortgages pledged to the repayment of principal and interest of the collateralized mortgage obligation are in themselves unconditionally guaranteed as to timely repayment of principal and interest by the United States or by any agency or instrumentality of the United States, and provided that the specific investment right within that collateralized mortgage obligation is not a zero coupon class, residual interest, or a class designated as principal or interest only. Provided that the aggregate amount of collateralized mortgage obligations secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would not exceed five percent (5%) of the insurer's total admitted assets.

(2) For purposes of the "one person" diversification restriction found in § 23-63-805(1), collateral mortgage obligations issued by the United States or any agency or instrumentality of the United States shall not be considered investments in or loans upon the security of the obligations, property, or securities of the United States or any such agency or instrumentality of the United States.

(3) If upon enactment, the immediate application of this provision would have the effect of reducing the admitted asset value of assets held by a particular insurer, the insurer may continue to reflect as admitted those assets that would be admissible but for the enactment of this



provision, until the annual statement filing for the year ended December 31, 2004.

(b) An insurer may invest up to ten percent (10%) of its assets in zero coupon, residual interest, or principal or interest only classes of collateralized mortgage obligations, provided that the underlying mortgages pledged to the repayment of principal and interest of the collateralized mortgage obligation are in themselves unconditionally guaranteed as to timely repayment of principal and interest by the United States or any agency or instrumentality of the United States.

**History.** Acts 1989, No. 772, § 4; 2001, No. 1604, § 38.

### **23-63-841. Derivative transactions.**

(a) As used in this section:

(1) “Cap” means an agreement obligating the seller to make payments to the buyer with each payment based on the amount by which a reference price or level or the performance or value of one (1) or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price;

(2) “Collar” means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor;

(3)(A) “Counterparty exposure amount” means the net amount of credit risk attributable to an over-the-counter derivative instrument. The amount of credit risk equals:

(i) The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(ii) Zero (0) if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(B) If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the National Association of Insurance Commissioners’ publication prepared by its Securities Valuation Office as it existed on January 1, 2005, entitled the “Purposes and Procedures Manual” as eligible for netting, the net amount of credit risk shall be the greater of zero (0) or the net sum of:

(i) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(ii) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(C) For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one (1) or both parties;

(4) "Covered" means that an insurer:

(A) Owns or can immediately acquire through the exercise of options, warrants, or conversion rights already owned the underlying interest in order to fulfill or secure its obligations under a call option, cap, or floor it has written; or

(B) Has set aside under a custodial or escrow agreement, cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written in an income generation transaction;

(5)(A) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery or assume or relinquish a specified amount of one (1) or more underlying interests or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one (1) or more underlying interests.

(B) "Derivative instrument" includes options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof and any agreements, options, or instruments permitted under regulations adopted by the Insurance Commissioner.

(C) "Derivative instrument" does not include an investment authorized by any other provision of this subchapter;

(6) "Derivative transaction" means a transaction involving the use of one (1) or more derivative instruments;

(7) "Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation;

(8) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one (1) or more underlying interests;

(9) "Forward" means an agreement other than a future to make or take delivery or effect a cash settlement based on the actual or expected price, level, performance, or value of one (1) or more underlying interests;

(10) "Future" means an agreement traded on a qualified exchange or qualified foreign exchange to make or take delivery or effect a cash settlement based on the actual or expected price, level, performance, or value of one (1) or more underlying interests;



(11) "Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(A) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or

(B) The currency exchange rate risk or the degree of exposure of assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring;

(12) "Income" means, with respect to a security, any interest, accrual of discount, dividends, or other distributions, such as rights, tax or assessment credits, warrants, and distributions in kind;

(13) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return;

(14) "Option" means an agreement giving the buyer the right to buy or receive, that is, a "call option", sell or deliver, that is, a "put option", enter into, extend, or terminate or effect a cash settlement based on the actual or expected price, level, performance, or value of one (1) or more underlying interests;

(15) "Over-the-counter derivative instrument" means a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse;

(16) "Potential exposure" means the amount determined in accordance with the National Association of Insurance Commissioners' Annual Statement Instructions in effect on January 1, 2005;

(17)(A) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one (1) or more assets that an insurer is authorized to acquire under Arkansas law.

(B) A derivative transaction entered into as a hedging transaction is not considered a replication transaction;

(18) "Swap" means an agreement to exchange or to net payments at one (1) or more times based on the actual or expected price, level, performance, or value of one (1) or more underlying interests;

(19) "Underlying interest" means the assets, liabilities, other interests, or a combination thereof, underlying a derivative instrument, such as any one (1) or more securities, currencies, rates, indices, commodities, or derivative instruments; and

(20)(A) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement.

(B) Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement or to facilitate divestiture of the securities of another business entity.

(b)(1) An insurer may use derivative instruments under this section to engage in:



(A) Hedging transactions; and

(B) Certain income generation transactions if the commissioner does not object to the proposed derivative transaction plan submitted by the insurer.

(2) An insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.

(3)(A) Before engaging in derivative transactions, an insurer shall establish written guidelines that shall be used for effecting and maintaining the transactions.

(B) The guidelines shall:

(i) Address investment or, if applicable, underwriting objectives and risk constraints, such as credit risk limits;

(ii) Address permissible transactions and the relationship of those transactions to its operations, such as a precise identification of the risks being hedged by a derivative transaction; and

(iii) Require compliance with internal control procedures.

(4) An insurer shall have a system for determining whether a derivative instrument used for hedging has been effective.

(5) An insurer shall have a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure amount.

(6) An insurer's board of directors shall approve the guidelines required by this subsection and determine whether the insurer has adequate professional personnel, technical expertise, and systems to implement investment practices involving derivatives.

(c) An insurer may enter into hedging transactions under this section if as a result of and after giving effect to the transaction:

(1) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;

(2) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and

(3) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.

(d) An insurer may enter only into the following types of income generation transactions if as a result of and after giving effect to the transactions the aggregate statement value of the fixed income assets that are subject to call or, for life and health insurers, that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:

(1) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms

prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(2) Sales of covered call options on equity securities if the insurer holds in its portfolio or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(3) Sales of covered puts on investments that the insurer is permitted to acquire under Arkansas law if the insurer has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(4) Sales of covered caps or floors if the insurer is a life and health insurer and holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(e) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of § 23-63-805.

(f) The commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (c) of this section or for other risk management purposes, but replication transactions are not permitted for other risk management purposes.

**History.** Acts 2005, No. 506, § 28; substituted “subsection (c)” for “subsection (b)” in (f), and made a minor stylistic change.  
2009, No. 726, § 21.

**Amendments.** The 2009 amendment

SUBCHAPTER 9 — DEPOSITS

SECTION.

- 23-63-901. Authorized deposits of insurers.
- 23-63-902. Purpose.
- 23-63-903. Eligible securities.
- 23-63-904. Depositary or custodian.
- 23-63-905. Record — Liability of commissioner and state.
- 23-63-906. Assignment or conveyance of securities or assets — Appraisal.

SECTION.

- 23-63-907. Rights of insurer during solvency.
- 23-63-908. Excess deposits.
- 23-63-909. Payment of claims.
- 23-63-910. Deficiency.
- 23-63-911. Duration and release of deposit generally.
- 23-63-912. Duration and release of deposit of life insurance and annuity reserves.

**Effective Dates.** Acts 1963, No. 153, § 4: July 1, 1963.

Acts 1989, No. 444, § 26: Mar. 9, 1989.  
Emergency clause provided: “It is hereby found and determined by the General Assembly that the current insurance laws of

this State as to protection of Arkansas policyholders of insolvent life and disability insurers are inadequate, and that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act being nec-

essary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers’ compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found

and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

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### 23-63-901. Authorized deposits of insurers.

The following deposits of insurers when made through the Insurance Commissioner shall be accepted and held, and shall be subject to the provisions of this subchapter:

- (1) Deposits required under the Arkansas Insurance Code for authority to transact insurance in this state;
- (2) Deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in that state, province, or country;
- (3) Deposits of reserves made by domestic life insurers under § 23-81-130;
- (4) Deposits in such additional amounts as are permitted to be made under § 23-63-908.

**History.** Acts 1959, No. 148, § 132; A.S.A. 1947, § 66-2701.

**Publisher’s Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### 23-63-902. Purpose.

Deposits shall be held for purposes as follows:

- (1) Deposits made in this state under § 23-63-206 shall be held for the purposes stated in that section;
- (2) A deposit made in this state by a domestic insurer transacting insurance in another state, province, or country and as required by the laws of that state, province, or country shall be held for the protection of the insurer’s policyholders, or policyholders and creditors;



(3) Deposits of reserves made by domestic life insurers under § 23-81-130 shall be held for the common benefit of all the holders of its life insurance policies and annuity contracts; and

(4) Deposits required pursuant to the retaliatory provisions, §§ 23-63-102 — 23-63-104, shall be held for such purposes as required by such laws and as specified in the Insurance Commissioner's order requiring the deposit.

**History.** Acts 1959, No. 148, § 133;  
A.S.A. 1947, § 66-2702.

### **23-63-903. Eligible securities.**

(a) All deposits required under § 23-63-206 for authority to transact insurance in this state shall consist of certified checks or certificates of deposit, or any combination of securities, the market value of which is readily ascertainable and, if negotiable by delivery or assignment, of the kinds described in the following sections of the Arkansas Insurance Code:

- (1) Section 23-63-806, United States Government obligations;
- (2) Section 23-63-808, state, county, municipal, and school obligations;
- (3) Section 23-63-809, municipal or county utilities;
- (4) Section 23-63-811, local industrial development bonds;
- (5) Section 23-63-813, international banks; and
- (6) Section 23-63-814, corporate bonds and debentures.

(b) All deposits required of a domestic insurer pursuant to the laws of another state, province, or country shall be composed of securities, if negotiable by delivery or assignment, of the kinds required or permitted by the laws of the state, province, or country, except common stocks, mortgages of any kind, and real estate.

(c) Deposits of the reserves of a domestic life insurer under § 23-81-130 shall consist of securities, if negotiable by delivery or assignment, and assets eligible for investment of the insurer's reserves under § 23-63-805(3).

(d) Deposits of foreign insurers made in this state under the retaliatory provision, §§ 23-63-102 — 23-63-104, shall consist of such assets as are required by the Insurance Commissioner pursuant to the provision.

**History.** Acts 1959, No. 148, § 134;  
A.S.A. 1947, § 66-2703.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-904. Depositary or custodian.**

(a) Deposits made under the Arkansas Insurance Code shall be made through the office of the Insurance Commissioner in safe deposit or under custodial arrangements as required or approved by the commis-

sioner consistent with the purposes of the deposit with an established safe deposit institution, bank, or trust company, or under other safe-keeping arrangements, located in this state, and selected by the insurer with the commissioner's approval.

(b) Except in the presence of the commissioner or his or her authorized representative, the insurer shall not have access to any securities or assets representing its deposits so held in safe deposit.

(c) The form and terms of all depositary or custodial agreements shall be as prescribed or approved by the commissioner consistent with the applicable provisions of the Arkansas Insurance Code.

(d) The compensation and expenses of the depositary or custodian shall be borne by the insurer.

**History.** Acts 1959, No. 148, § 135; 1979, No. 596, § 1; A.S.A. 1947, § 66-2704; Acts 1997, No. 296, § 4.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-905. Record — Liability of commissioner and state.**

(a) The Insurance Commissioner shall keep a record of the securities and assets comprising each deposit and of all his or her transactions relative thereto, showing by item the amount and market value.

(b) The commissioner and the State of Arkansas shall have no liability as to the safekeeping of any deposit by the depositary or custodian.

**History.** Acts 1959, No. 148, § 136; A.S.A. 1947, § 66-2705.

### **23-63-906. Assignment or conveyance of securities or assets — Appraisal.**

(a)(1) All securities not negotiable by delivery and deposited by an insurer, other than under § 23-81-130, shall be assigned to the Insurance Commissioner and his or her successors in office.

(2) All other assets so deposited shall be transferred or conveyed to the commissioner.

(3) Upon release of any security or asset to the insurer, the commissioner shall reassign, transfer, or reconvey the asset or security to the insurer.

(b) The commissioner may, in his or her discretion, prior to acceptance for deposit of any security or asset, or at any time thereafter while so deposited, have the security or asset appraised or valued by competent appraisers. The reasonable costs of the appraisal or valuation shall be borne by the insurer.

**History.** Acts 1959, No. 148, § 137; A.S.A. 1947, § 66-2706.

**23-63-907. Rights of insurer during solvency.**

So long as the insurer remains solvent and is in compliance with the Arkansas Insurance Code, it may:

- (1) Demand, receive, sue for, and recover the income from the securities or assets deposited;
- (2) Exchange and substitute for the deposited securities or assets, or any part thereof, other eligible securities and assets of equivalent or greater value; and
- (3) At any reasonable time inspect the deposit.

**History.** Acts 1959, No. 148, § 138; A.S.A. 1947, § 66-2707.

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

**23-63-908. Excess deposits.**

(a) An insurer may so deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under the Arkansas Insurance Code by not more than twenty percent (20%) of the required or permitted deposit or one hundred thousand dollars (\$100,000), whichever is the larger amount, for the purpose of absorbing fluctuations in the value of securities and assets deposited and to facilitate the exchange and substitution of such securities and assets.

(b)(1) During the solvency of the insurer, any excess shall be released to the insurer upon its request.

(2) During the insolvency of the insurer, the excess deposit shall be released only as provided in § 23-63-911(b)(3).

**History.** Acts 1959, No. 148, § 139; A.S.A. 1947, § 66-2708.

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

**23-63-909. Payment of claims.**

(a)(1)(A) If any insurer which has made the deposit in this state pursuant to § 23-63-206 fails to pay promptly any final judgment entered against it in favor of a citizen of this state, the Insurance Commissioner is authorized to sell at public or private sale, after forty-five (45) days' notice to the insurer by certified mail, a sufficient amount of securities to pay the claim.

(B) As used in this section, "final judgment" means any judgment issued by a court of record and the enforcement or execution of which has not been stayed by a court of competent jurisdiction.

(2) Except as provided in this section and as otherwise provided in the Arkansas Insurance Code, no deposit made in this state pursuant to § 23-63-206 by any insurer shall be subject to garnishment, levy, or execution.



(b)(1) The commissioner, under procedures he or she shall prescribe, may release to the insurer any part of the special additional four percent (4%) accident and health deposit formerly required under § 23-63-206.

(2) For good cause, the commissioner may in writing exempt insurers from filing replacement deposits for any line of insurance, including, but not limited to, statutory deposits for discontinued lines of insurance.

**History.** Acts 1959, No. 148, § 140; 1963, No. 153, § 2; A.S.A. 1947, § 66-2709; Acts 1989, No. 444, § 23; 1993, No. 901, § 12; 2001, No. 1604, § 40; 2005, No. 506, § 29.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### 23-63-910. Deficiency.

(a)(1) If for any reason the market value of assets and securities of an insurer held on deposit in this state under § 23-63-206 or under the retaliatory provision, §§ 23-63-102 — 23-63-104, falls below the amount so required, then the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure the deficiency.

(2) If the insurer has failed to cure the deficiency within thirty (30) days after receipt of notice of deficiency by registered mail from the Insurance Commissioner, the commissioner shall revoke the insurer's certificate of authority.

(b)(1) If for any reason the market value of assets and securities of a domestic life insurer, representing deposit of the reserves of certain of its outstanding policies and annuity contracts under § 23-81-130, falls below the amount so required and as determined from the insurer's most recent annual statement or most recent examination of the insurer by the commissioner, then the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure the deficiency.

(2) If the insurer has failed to cure the deficiency, after the commissioner has given the insurer notice of deficiency by registered mail, within such reasonable time, not exceeding ninety (90) days, as may be allowed by the commissioner and so specified in his or her notice, the insurer shall be deemed to be insolvent. The commissioner shall then revoke its certificate of authority and institute delinquency proceedings against the insurer under §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132.

**History.** Acts 1959, No. 148, § 141; A.S.A. 1947, § 66-2710; Acts 2001, No. 1604, § 41.

**23-63-911. Duration and release of deposit generally.**

(a) Subject to the right of the insurer to substitute securities as provided in § 23-63-907, all deposits in this state under § 23-63-206 shall be left on deposit as long as there is outstanding any liability of the insurer with respect to which the deposit was made.

(b) Any deposit referred to in subsection (a) of this section, or any deposit made under the retaliatory provision, §§ 23-63-102 — 23-63-104, or under any other provision of the Arkansas Insurance Code other than § 23-81-130, shall be released and returned:

(1) To the insurer upon the extinguishment by reinsurance, or otherwise, of all liability of the insurer for the security of which the deposit is held;

(2) To the insurer, during solvency, to the extent the deposit is in excess of the amount required; or

(3) Upon proper order of a court of competent jurisdiction in this state, to the ancillary receiver of the insurer in this state or to the domiciliary receiver, conservator, rehabilitator, liquidator of the insurer, or to any other properly designated official who succeeds to the management and control of the insurer's assets.

**History.** Acts 1959, No. 148, § 142; 1963, No. 153, § 3; A.S.A. 1947, § 66-2711.

Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

**23-63-912. Duration and release of deposit of life insurance and annuity reserves.**

(a) Deposits of assets and securities representing, and at least equal in amount to, the reserves of a domestic life insurer under certain of its life insurance policies and annuity contracts and deposited under § 23-81-130 shall be held as long as the policies and contracts with respect to which the reserves exist are in force.

(b) With respect to policies and contracts in force, the applicable portion of the deposit shall not be released, whether or not the policies or contracts have been reinsured or the entire liability thereunder assumed by another insurer or the issuing insurer has become insolvent, subject to delinquency proceedings, or has been dissolved.

(c) Upon proof satisfactory to the Insurance Commissioner that certain of the policies or contracts previously in force have lapsed, been surrendered for cash value, matured, or otherwise terminated and that all liabilities of the insurer to policyholders and beneficiaries with respect to those policies or contracts have been fully paid and discharged, the commissioner may release any applicable portion of the deposit if the deposit is then in excess of the amount otherwise required. The commissioner may accept and rely upon records of the insurer as kept, summarized, and reported to him or her in the regular course of its business, as to any such payment and discharge.

(d)(1) If the issuing insurer, or any insurer which may have assumed direct liability with respect to any policy or contract, becomes insolvent, the commissioner shall make or cause to be made, pursuant to such reasonable procedure therefor as he or she may deem proper, direct payment to persons entitled thereto under the terms of those policies or contracts of the proportionate interest of the person in the assets and securities then held on deposit, after deducting from the deposit the expenses actually incurred by the commissioner, if any, in making the distribution to the extent that the expenses cannot be met out of the insurer's other assets without diminution of the equity therein of other policyholders, contract holders, and creditors of the insurer.

(2) In the event of insolvency, the commissioner shall release to the receiver or rehabilitator of the insurer the excess, if any, of the deposit over the amount thereof necessary to discharge in full the obligations of the insurer as to policies and contracts for which the deposit is so held, together with the reasonable costs and expenses to be incurred by the commissioner in the discharge of the obligations as provided in this subsection.

(e) If the issuing or assuming insurer is insolvent, for the purposes of subsection (d) of this section, the commissioner shall accept and rely upon the records of the insurer as to the identity of persons to whom the deposit is payable under policies and annuity contracts and the amount to which respectively entitled.

**History.** Acts 1959, No. 148, § 143;  
A.S.A. 1947, § 66-2712.

**SUBCHAPTER 10 — SURETIES ON BONDS**

SECTION.	SECTION.
23-63-1001. Court, judicial, and certain other bonds.	23-63-1003. Insurer's rights as surety same as individual's.
23-63-1002. Bonds given by state, county, or municipal officers.	23-63-1004. Estoppel to deny corporate power to be surety.

**23-63-1001. Court, judicial, and certain other bonds.**

(a)(1) Upon compliance with the provisions of the Arkansas Insurance Code, a surety insurer may become surety upon any bond or other contract of any person and may become surety upon any bond required to be given by any person in the course of judicial proceedings or upon the bonds of administrators, executors, guardians, receivers, assignees, trustees, or other fiduciaries required to give the bond.

(2) The obligation of the insurer as surety upon those bonds or contracts may be accepted by the court, officer, board, or person required to approve the bond or contract as the sole surety upon the bond or contract even though previous laws or customs may have required two (2) sureties upon the bonds or contracts or may have required one (1) or more of the sureties to be residents of any particular territory.



(b) Where these bonds are given by administrators, executors, guardians, receivers, assignees, trustees, or other officers of the court, the court appointing the officers may allow the expense incurred by the officers in securing this bond in the insurer as part of the expenses of the trust to be paid out of the fund.

**History.** Acts 1959, No. 148, § 449; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-4101. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### 23-63-1002. Bonds given by state, county, or municipal officers.

(a) All bonds or other obligations required or desired to be given by any state, county, or municipal officer for the due performance of the duties of his or her office or for the due accounting of money coming to his or her hands or for any other purpose whatever shall be sufficient when executed by a surety insurer authorized to transact business under the Arkansas Insurance Code as sole surety upon the bonds or obligations, whether or not previous laws required the bond to be executed by more than one (1) surety, or, provided that one (1) or more of the sureties upon the bond should be resident of this state, or any particular county therein, or resident of any specified territory.

(b) All officers, courts, and boards of this state, any county therein, or any municipality whose duty it is or shall be to approve the official bonds of any state, county, or municipal officer shall approve the bond as to its sureties when the insurer is the sole surety thereon.

**History.** Acts 1959, No. 148, § 450; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-4102. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### 23-63-1003. Insurer's rights as surety same as individual's.

(a) A surety insurer authorized as such under the Arkansas Insurance Code shall have the same power and authority to become surety upon all bonds required by law or desired by contracting parties and shall be vested with the same rights and be subject to all the liabilities as individuals who become sureties on the bonds or contracts.

(b) A surety insurer which is surety upon any bond or contract may be released from its liability thereon on the same terms and conditions as are by law prescribed for the release of individuals as sureties.

**History.** Acts 1959, No. 148, § 451; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-4103. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

**23-63-1004. Estoppel to deny corporate power to be surety.**

In any action brought against a surety insurer to enforce the liability assumed by it under any bond or contract, the insurer is estopped from denying its corporate or other power to execute that bond or guaranty or to assume the liability.

**History.** Acts 1959, No. 148, § 452;  
A.S.A. 1947, § 66-4104.

**SUBCHAPTER 11 — BUSINESS TRANSACTED WITH  
PRODUCER CONTROLLED PROPERTY AND CASUALTY  
INSURER ACT**

**SECTION.**

23-63-1101. Title.

23-63-1102. Definitions.

23-63-1103. Date of required compliance.

23-63-1104. Applicability.

**SECTION.**

23-63-1105. Minimum standards.

23-63-1106. Disclosure.

23-63-1107. Penalties.

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**Effective Dates.** Acts 1993, No. 526, § 6: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is no present law governing business transacted with producer controlled property/casualty insurers and the immediate passage of this Act

is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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**23-63-1101. Title.**

This subchapter may be cited as the "Business Transacted with Producer Controlled Property and Casualty Insurer Act".

**History.** Acts 1993, No. 526, § 1.

**23-63-1102. Definitions.**

As used in this subchapter:

(1) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners;

(2) "Control" or "controlled" has the meaning set out in § 23-63-503(2);

(3) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer;

(4) "Controlling producer" means a producer who, directly or indirectly, controls an insurer;

(5)(A) “Licensed insurer” or “insurer” means any person, firm, association, or corporation duly licensed to transact a property and casualty insurance business in this state.

(B) The following, among other things, are not licensed insurers for the purposes of this subchapter:

(i) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, the Product Liability Risk Retention Act of 1981, and §§ 23-94-101 — 23-94-108 [repealed], 23-94-201 — 23-94-209 [revised], and 23-94-301 — 23-94-303 [repealed];

(ii) All residual market pools and joint underwriting authorities or associations; and

(iii) All captive insurers, that is, insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations and group members and their affiliates; and

(6) “Producer” means an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, such a person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

**History.** Acts 1993, No. 526, § 1.

Amendments Reauthorization Act of 1986, referred to in this section, is codified as 42 U.S.C. § 11001 et seq.

**U.S. Code.** The Product Liability Risk Retention Act of 1981 is codified as 15 U.S.C. § 3901 et seq. The Superfund

### **23-63-1103. Date of required compliance.**

Compliance with this subchapter shall be required on and after January 1, 1994.

**History.** Acts 1993, No. 526, § 2.

### **23-63-1104. Applicability.**

(a) This subchapter shall apply to licensed insurers as defined in § 23-63-1102 either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law.

(b) All provisions of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., to the extent they are not superseded by the provisions of this subchapter, shall continue to apply to all parties within holding company systems subject to the provisions of this subchapter.

**History.** Acts 1993, No. 526, § 1.



**23-63-1105. Minimum standards.**

(a)(1) The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding subdivision (a)(1) of this section, the provisions of this section shall not apply if:

(A) The controlling producer:

(i) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(ii) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(B) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(b) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party and the contract has been approved by the board of directors of the controlled insurer and contains the following minimum provisions:

(1)(A) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer.

(B) The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;

(3)(A) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis.

(B) The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under the contract;

(4)(A) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity in one (1) or more appropriately identified bank accounts in banks that are members of the Federal Reserve System.

(B) However, funds of a controlled producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domicile;

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(6) The contract shall not be assigned in whole or in part by the controlling producer;

(7)(A) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks.

(B)(i) The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions.

(ii) The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than a controlling producer;

(8)(A) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees.

(B)(i) The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers.

(ii) For purposes of this subdivision (b)(8) and subdivision (b)(7) of this section, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(9)(A) If the contract provides that the controlling producer on insurance business placed with the insurer is to be compensated contingent upon the insurer's profits on that business, then such a commission shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance.

(B) In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (c) of this section;

(10)(A) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings.

(B) The insurer may establish a different limit for each line or subline of business.

(C)(i) The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached.

(ii) The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the control-

ling producer places with the controlled insurer, except that the controlling producer may bind facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for reinsurance both assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(c)(1) Every controlled insurer shall have an audit committee of the board of directors, composed of independent directors.

(2) The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the Insurance Commissioner to review the adequacy of the insurer's loss reserves.

(d)(1) In addition to any other required loss certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the year's end, including losses incurred but not reported, on business placed by the producer.

(2) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such an amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

**History.** Acts 1993, No. 526, § 1; 2009, No. 726, § 22.

**Amendments.** The 2009 amendment, in (b), substituted "with a controlled in-

surer" for "with a controlling insurer," inserted "controlled" preceding "insurer" in two places, and made a minor stylistic change.

### **23-63-1106. Disclosure.**

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his or her records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

**History.** Acts 1993, No. 526, § 1.

### **23-63-1107. Penalties.**

(a)(1) If the Insurance Commissioner believes that the controlling producer or any other person has not materially complied with this subchapter, after notice and hearing, the commissioner may order the



controlling producer to cease placing business with the controlled insurer.

(2) If it is found that because of such material noncompliance the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to § 23-68-101 et seq., and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this subchapter, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the Arkansas Insurance Code.

(d) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

**History.** Acts 1993, No. 526, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

SUBCHAPTER 12 — ANNUAL REPORTS BY PROPERTY AND CASUALTY INSURERS

SECTION.  
23-63-1201. Regulations.  
23-63-1202. Contents of report.  
23-63-1203. Due date.  
23-63-1204. Compilation and review —  
Publication.

SECTION.  
23-63-1205. Failure to comply with content requirement.

**Effective Dates.** Acts 1995, No. 108, § 6: Feb. 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that property and casualty insurers are required to file annual reports with the insurance commissioner beginning March 1, 1995; some of the information required for filing the report is not available until April and therefore the March 1 deadline is impractical; this act changes the filing deadline

from March 1 to May 1; and this act should go into effect immediately in order to delay the March 1, 1995 filing deadline until May 1, 1995 and May 1 of each year thereafter. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

**RESEARCH REFERENCES**

U. Ark. Little Rock L.J. Legislative Survey, Insurance, 16 U. Ark. Little Rock L.J. 141.

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**23-63-1201. Regulations.**

The Insurance Commissioner shall promulgate regulations which shall require each insurer licensed to write property and casualty insurance in this state to submit an annual report on a form furnished by the commissioner showing its direct writings in this state.

**History.** Acts 1993, No. 166, § 1.

**23-63-1202. Contents of report.**

(a) The report required by this subchapter shall include, but not be limited to, the following types of insurance written by such insurer:

(1) Motor vehicle bodily injury liability insurance, including medical pay insurance;

(2) Products liability insurance;

(3) Medical malpractice insurance;

(4) Architects' and engineers' malpractice insurance;

(5) Attorneys' malpractice insurance;

(6) Motor vehicle personal injury protection insurance;

(7) Motor vehicle property liability insurance;

(8) Uninsured motorist insurance;

(9) Underinsured motorist insurance; and

(10) Workers' compensation insurance.

(b) The report shall include the following data for the previous year ending on December 31:

(1) Direct premiums written;

(2) Direct premiums earned;

(3) Net investment income, including net realized capital gains and losses, using appropriate estimates where necessary;

(4) Incurred claims developed as the sum of, and with figures provided for, the following:

(A) Dollar amount of claims paid current year or paid losses; plus

(B) Reserves for reported claims at the end of the current year; minus

(C) Reserves for reported claims at the end of the previous year; plus

(D) Reserves for incurred but not reported claims at the end of the current year; minus

(E) Reserves for incurred but not reported claims at the end of the previous year; plus

(F) Reserves for loss adjustment expense at the end of the current year reported split between allocated loss adjustment expenses and unallocated loss adjustment expenses; minus

(G) Reserves for loss adjustment expense at the end of the previous year reported split between allocated loss adjustment expenses and unallocated loss adjustment expenses;

(5) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, general office expenses, taxes, licenses, fees, and all other expenses;

(6) Net underwriting gain or loss;

(7) Net operation gain or loss, including net investment income;

(8) Net investment gain on surplus, allocated to the lines as a percentage of the previous year's incurred losses;

(9) Federal income taxes paid, allocated to the lines as a percentage of earned premium; and

(10) Return on surplus with surplus allocated to the lines based upon earned premiums.

**History.** Acts 1993, No. 166, § 1; 1995, No. 108, § 2; 1997, No. 1111, § 1.

### 23-63-1203. Due date.

The report shall be due by May 1 of each year.

**History.** Acts 1993, No. 166, § 1; 1995, No. 108, § 1.

by Acts 1993, No. 166, § 1, this section ended: "and the first report shall cover 1994."

**A.C.R.C. Notes.** As originally enacted

### 23-63-1204. Compilation and review — Publication.

(a) It shall be the duty of the Insurance Commissioner to annually compile and review all reports submitted by insurers pursuant to this subchapter.

(b) The filings shall be published and made available to any interested insured or citizen.

**History.** Acts 1993, No. 166, § 1.

### 23-63-1205. Failure to comply with content requirement.

Any failure to comply with the provisions of § 23-63-1202 shall be punished pursuant to the Trade Practices Act, § 23-66-201 et seq.

**History.** Acts 1997, No. 1111, § 2.

## SUBCHAPTER 13 — RISK-BASED CAPITAL ACT

#### SECTION.

23-63-1301. Title.

23-63-1302. Definitions.

23-63-1303. RBC reports.

#### SECTION.

23-63-1304. Company action level event.

23-63-1305. Regulatory action level event.



SECTION.

- 23-63-1306. Authorized control level event.
- 23-63-1307. Mandatory control level event.
- 23-63-1308. Hearings.
- 23-63-1309. Confidentiality — Prohibition on announcements — Prohibition on use in rate-making.

SECTION.

- 23-63-1310. Supplemental provisions — Rules — Exemption.
- 23-63-1311. Foreign insurers.
- 23-63-1312. Immunity.
- 23-63-1313. Authority of commissioner to adopt rules.
- 23-63-1314. Penalties and liabilities.
- 23-63-1315. [Repealed.]
- 23-63-1316. Notices.

**Effective Dates.** Acts 1995, No. 622, § 4: Mar. 14, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws are not sufficient to protect the Arkansas insurance buying public. It is determined that it is in the best interests of the State of Arkansas that the laws in this Act be adopted immediately so that the Arkansas Insurance Department can better regulate the insurance industry. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

23-63-1301. Title.

This subchapter shall be known and may be cited as the “Risk-Based Capital Act”.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment inserted “shall be known and”.

23-63-1302. Definitions.

As used in this subchapter:

(1) “Adjusted RBC report” means a risk-based capital report that has been adjusted by the Insurance Commissioner under § 23-63-1303(e);

(2) “Corrective order” means an order issued by the commissioner specifying corrective actions that the commissioner has determined are needed;

(3) “Domestic insurer” means an insurance company domiciled in this state;

(4) “Foreign insurer” means an insurance company that may do business in this state under § 23-63-201 et seq. but is not domiciled in this state;

(5) “Life or accident and health insurer” means:

(A) An insurance company authorized to transact a life or accident and health insurance business under § 23-63-201 et seq.; or

(B) An authorized property and casualty insurer writing only accident and health insurance;

(6) “NAIC” means the National Association of Insurance Commissioners;

(7) “Negative trend” means, with respect to a life or accident and health insurer, a negative trend over a period, as determined according to the trend test calculation included in the RBC instructions;

(8)(A) “Property or casualty insurer” means an insurance company authorized to transact property or casualty insurance business under § 23-63-201 et seq., including farmers’ mutual aid associations and fraternal benefit societies.

(B) “Property or casualty insurer” does not include:

(i) Monoline mortgage guaranty insurers;

(ii) Financial guaranty insurers; or

(iii) Title insurers;

(9) “RBC” means risk-based capital;

(10) “RBC instructions” means the RBC report including risk-based capital instructions adopted by the NAIC, as amended by the NAIC;

(11) “RBC level” means an insurer’s company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC when:

(A) “Authorized control level RBC” means the number determined under the risk-based capital formula according to the RBC instructions;

(B) “Company action level RBC” means, with respect to an insurer, the product of two (2) and its authorized control level RBC;

(C) “Mandatory control level RBC” means the product of seven-tenths of one percent (0.7%) and the authorized control level RBC; and

(D) “Regulatory action level RBC” means the product of one and five-tenths (1.5) and its authorized control level RBC;

(12) “RBC plan” means a comprehensive financial plan containing the elements named in § 23-63-1304(b). If the commissioner rejects the RBC plan and it is revised by the insurer with or without the commissioner’s recommendation, the plan is called the “revised RBC plan”;

(13) "RBC report" means the report required under § 23-63-1303; and

(14) "Total adjusted capital" means the sum of:

(A) An insurer's statutory capital and surplus as determined according to the statutory accounting applicable to the annual financial statements required under § 23-63-216; and

(B) Other items, if any, that the RBC instructions may provide.

**History.** Acts 1995, No. 622, § 1; 1999, No. 625, § 1; 2001, No. 1603, §§ 11, 12; 2003, No. 1473, § 52; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment rewrote the section.

### **23-63-1303. RBC reports.**

(a) Annually on or before March 1, each domestic insurer shall prepare and submit to the Insurance Commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing the information as needed by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(1) With the NAIC according to the RBC instructions; and

(2) With the insurance commissioner in a state in which the insurer may do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report by the later of:

(A) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

(B) The filing date.

(b) A life or accident and health insurer's RBC is determined according to the formula stated in the RBC instructions. The formula shall take into account and may adjust for the covariance among the following factors determined in each case by applying the factors as stated in the RBC instructions:

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) Other business and relevant risks as determined in each case by applying the factors in the way stated in the RBC instructions.

(c) A property and casualty insurer's RBC is determined according to the formula stated in the RBC instructions. The formula may adjust for the covariance among the following factors determined according to the formula stated in the RBC instructions:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) Other business and relevant risks as stated in the RBC instructions.

(d) An excess of capital over the amount produced by the risk-based capital requirements contained in this subchapter and the formulas,



schedules, and instructions referenced in this subchapter are desirable in the business of insurance. Insurers should seek to maintain capital above the RBC levels needed by this subchapter. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this subchapter.

(e) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an “adjusted RBC report”.

**History.** Acts 1995, No. 622, § 1; 2001, No. 1603, § 13; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment redesignated A. through E. as (a) through (e); substituted “previous calendar year” for “calendar year just ended” in the introductory paragraph of (a); in the introductory paragraph of (b), substituted “or” for

“and/or” and “among the following factors determined in each case by applying the factors as stated in the RBC Instructions” for “between”; rewrote (b)(4); rewrote the introductory paragraphs of (c) and (c)(4); and substituted “needed” for “required” in (d).

### **23-63-1304. Company action level event.**

(a) As used in this subchapter, “company action level event” means any of the following events:

(1) The filing of an RBC report by an insurer that shows:

(A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(B) If a life or accident and health insurer, the insurer has total adjusted capital that is more than or equal to its company action level RBC but less than the product of its authorized control level RBC and two and five-tenths (2.5) and has a negative trend; or

(C) For the year ending December 31, 2011, and each year following, if a property and casualty insurer has total adjusted capital that is more than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3) and triggers the trend test according to the trend test calculation included in the property and casualty RBC instructions;

(2) The notification by the Insurance Commissioner to the insurer of an adjusted RBC report that indicates an event in subdivision (a)(1) of this section, if the insurer does not challenge the adjusted RBC report under § 23-63-1308; or

(3) If under § 23-63-1308 an insurer challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer’s challenge.

(b) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that shall:

(1) Identify the conditions that contribute to the company action level event;

(2) Contain proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;

(3) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of and problems associated with the insurer's business, including without limitation its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(c) The insurer shall submit the RBC plan:

(1) Within forty-five (45) days after the company action level event; or

(2) If the insurer challenges an adjusted RBC report under § 23-63-1308, within forty-five (45) days after notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

(d) Within sixty (60) days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether or not the RBC plan is implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall state the reasons for the determination and may state proposed revisions that shall make the RBC plan satisfactory in the judgment of the commissioner. On notification from the commissioner, the insurer shall prepare a revised RBC plan that may incorporate by reference revisions proposed by the commissioner and shall submit the revised RBC plan to the commissioner:

(1) Within forty-five (45) days after the notification from the commissioner; or

(2) If the insurer challenges the notification from the commissioner under § 23-63-1308, within forty-five (45) days after a notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner, subject to the insurer's right to a hearing under § 23-63-1308, may specify in the notification that the notification constitutes a regulatory action level event.



(f) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in a state in which the insurer may do business if:

(1) The state has an RBC provision substantially similar to § 23-63-1309(a); and

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(A) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(B) The date that the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

**History.** Acts 1995, No. 622, § 1; 2001, No. 1603, § 14; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment redesignated A. through F. as (a) through (f); redesignated A.(1)(a) and (b) as (a)(1)(A) and (B); inserted “As used in this subchapter” in the introductory paragraph of (a); in (a)(1)(B), substituted “or” for “and/or” and “two and five-tenths (2.5)” for “2.5”; inserted (a)(1)(C); substituted “subdivision (a)(1) of this section” for “paragraph (1) of this subsection” in (a)(2)

and (a)(3); substituted “and surplus” for “and/or surplus” in (b)(3); rewrote the introductory paragraph of (d); in (e), deleted “may at the commissioner’s discretion” preceding “subject to” and inserted “may”; substituted “§ 23-63-1309” for “§ 23-63-1309(A)” in (f)(1); redesignated F.(2)(a) and (b) as (f)(2)(A) and (B); and substituted “subsections (c) and (d) of this section” for “§§ 23-63-1304(C) and 23-63-1304(D)” in (f)(2)(B).

### **23-63-1305. Regulatory action level event.**

(a) As used in this subchapter, “regulatory action level event” means, with respect to an insurer, any of the following events:

(1) The filing of an RBC report by the insurer that shows the insurer’s total adjusted capital is more than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(2) The notification by the Insurance Commissioner to an insurer of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section if the insurer does not challenge the adjusted RBC report under § 23-63-1308;

(3) If under § 23-63-1308 the insurer challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer’s challenge;

(4) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(5) The failure of the insurer to submit an RBC plan to the commissioner within the time period stated in § 23-63-1304(c);

(6) Notification by the commissioner to the insurer that:

(A) The RBC plan or revised RBC plan submitted by the insurer is unsatisfactory in the judgment of the commissioner; and



(B) The notification constitutes a regulatory action level event with respect to the insurer if the insurer has not challenged the determination under § 23-63-1308;

(7) If under § 23-63-1308 the insurer challenges a determination by the commissioner under subdivision (a)(6) of this section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the challenge;

(8) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event according to its RBC plan or revised RBC plan and the commissioner has so stated in the notification if the insurer has not challenged the determination under § 23-63-1308; or

(9) If under § 23-63-1308 the insurer challenges a determination by the commissioner under subdivision (a)(8) of this section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the challenge.

(b) In the event of a regulatory action level event the commissioner shall:

(1) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) Perform the examination or analysis as the commissioner considers necessary of the assets, liabilities, and operations of the insurer, including a review of its RBC plan or revised RBC plan; and

(3) After the examination or analysis, issue a corrective order specifying the corrective actions as the commissioner shall determine are needed.

(c)(1) In determining corrective actions, the commissioner may take into account the factors considered relevant with respect to the insurer based on the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including without limitation the results of sensitivity tests undertaken under the RBC instructions.

(2) The insurer shall submit the RBC plan or revised RBC plan:

(A) Within forty-five (45) days after the occurrence of the regulatory action level event;

(B) If the insurer challenges an adjusted RBC report under § 23-63-1308 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge; or

(C) If the insurer challenges a revised RBC plan under § 23-63-1308 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

(d) The commissioner may keep actuaries and investment experts and other consultants as necessary in the judgment of the commis-

sioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the insurer, and make the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants are borne by the affected insurer or the other party as directed by the commissioner.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment redesignated A. through D. as (a) through (d); inserted "As used in this subchapter" in the introductory paragraph of (a); substituted "subdivision (a)(1) of this section" for "paragraph (1)" in (a)(2) and (a)(3);

substituted "§ 12 23-63-1304(c)" for "§ 23-63-1304(C)" in (a)(5); redesignated (a)(6)(a) and (a)(6)(b) as (a)(6)(A) and (a)(6)(B); substituted "subdivision (a)(6) of this section" for "paragraph (6)" in (a)(7); and substituted "subdivision (a)(8) of this section" for "paragraph (8)" in (a)(9).

### **23-63-1306. Authorized control level event.**

(a) As used in this subchapter, "authorized control level event" means any of the following events:

(1) The filing of an RBC report by the insurer that shows the insurer's total adjusted capital is more than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(2) The notification by the Insurance Commissioner to the insurer of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section if the insurer does not challenge the adjusted RBC report under § 23-63-1308;

(3) If under § 23-63-1308 the insurer challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge;

(4) The failure of the insurer to respond in a way satisfactory to the commissioner to a corrective order if the insurer has not challenged the corrective order under § 23-63-1308; or

(5) If the insurer has challenged a corrective order under § 23-63-1308 and the commissioner, after a hearing, has rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a way satisfactory to the commissioner, to the corrective order after rejection or modification by the commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(1) Take the actions required under § 23-63-1305 regarding an insurer with respect to which a regulatory action level event has occurred; or

(2) If the commissioner considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take the actions necessary to cause the insurer to be placed under regulatory control under § 23-68-101 et seq. In the event the commissioner takes the actions, the authorized control level event is sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers, and duties with respect to



the insurer as stated in § 23-68-101 et seq. If the commissioner takes action under this section under an adjusted RBC report, the insurer is entitled to the protections provided to insurers under § 23-68-101 et seq. pertaining to summary proceedings.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment redesignated A. and B. as (a) and (b); inserted "As used in this subchapter" in

the introductory paragraph of (a); substituted "subdivision (a)(1) of this section" for "paragraph (1)" in (a)(2) and (a)(3); and substituted "this section" for "this paragraph" in (b)(2).

### **23-63-1307. Mandatory control level event.**

(a) As used in this subchapter, "mandatory control level event" means any of the following events:

(1) The filing of an RBC report that shows the insurer's total adjusted capital is less than its mandatory control level RBC;

(2) Notification by the Insurance Commissioner to the insurer of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section if the insurer does not challenge the adjusted RBC report under § 23-63-1308; or

(3) If under § 23-63-1308 the insurer challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

(b) In the event of a mandatory control level event:

(1) With respect to a life insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under § 23-68-101 et seq. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers, and duties to the insurer stated in § 23-68-101 et seq. If the commissioner takes action under an adjusted RBC report, the insurer is entitled to the protections of § 23-68-101 et seq. pertaining to summary proceedings. The commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period; and

(2) With respect to a property and casualty insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under § 23-68-101 et seq., or in the case of an insurer that is writing no business and is running-off its existing business, may allow the insurer to continue its runoff under the supervision of the commissioner. In either event, the mandatory control level event is sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers, and duties with respect to the insurer stated in § 23-68-101 et seq. If the commissioner takes action under an adjusted RBC report, the insurer is entitled to the protections of § 23-68-101 et seq. pertaining to summary proceedings. The commissioner may forego action for up to ninety (90)



days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment redesignated A. and B. as (a) and (b); inserted “As used in this subchapter” in the introductory paragraph of (a); substi-

tuted “subdivision (a)(1) of this section” for “paragraph (1)” in (a)(3); and deleted “Notwithstanding any of the foregoing” preceding “The commissioner may forego action” in the last sentence of (b)(1) and the last sentence of (b)(2).

### 23-63-1308. Hearings.

(a)(1) If any of the events listed in subsection (b) of this section occurs, the insurer shall have the right to a confidential administrative hearing on record, at which the insurer may challenge any determination or action by the Insurance Commissioner.

(2)(A) The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subsection (b) of this section.

(B) On receipt of the insurer’s request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer’s request.

(b) Subsection (a) of this section applies if:

(1) The commissioner notifies an insurer of an adjusted RBC report;

(2) The commissioner notifies an insurer that:

(A) The insurer’s RBC plan or revised RBC plan is unsatisfactory; and

(B) The notification constitutes a regulatory action level event with respect to the insurer;

(3) The commissioner notifies an insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer according to its RBC plan or revised RBC plan; or

(4) The commissioner notifies an insurer of a corrective order with respect to the insurer.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4.

**Amendments.** The 2011 amendment redesignated and subdivided the introductory language as (a); in (a)(1), substituted “the events listed in subsection (b) of this section occurs” for “the following” and

“administrative hearing” for “department hearing”; substituted “subsection (b) of this section” for “subsection A, B, C or D” in (a)(2)(A); inserted the introductory paragraph of (b); and redesignated former A. through D. as (b)(1) through (b)(4).

**23-63-1309. Confidentiality — Prohibition on announcements — Prohibition on use in ratemaking.**

(a) The RBC reports, to the extent the information in the RBC reports is not needed to be stated in a publicly available annual statement schedule, and RBC plans, including the results or report of an examination or analysis of an insurer performed under a corrective order issued by the Insurance Commissioner under examination or analysis, with respect to a domestic insurer or foreign insurer that are filed with the commissioner, constitute information that may be damaging to the insurer if made available to its competitors and is kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, or both, other than by the commissioner and then only to enforce actions taken by the commissioner under this subchapter or other insurance laws of this state.

(b)(1) It is the judgment of the General Assembly that the comparison of an insurer's total adjusted capital to its RBC levels is a regulatory tool that may show the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Except as otherwise required under this subchapter, the making, publishing, disseminating, circulating, or placing before the public or causing directly or indirectly to be made, published, distributed, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of an insurer or of any component derived in the calculation by an insurer, agent, broker, or other person engaged in any way in the insurance business would be misleading and is prohibited.

(2) If a materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels or any of them or an inappropriate comparison of any other amount to the insurer's RBC levels is published in a written publication and the insurer may demonstrate to the commissioner with substantial proof the falsity of the statement or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(c) It is the further judgment of the General Assembly that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans:

(1) Are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers; and

(2) Shall not be used by the commissioner:

(A) For ratemaking nor considered or introduced as evidence in a rate proceeding; or

(B) To compute or derive elements of an appropriate premium level or rate of return for a line of insurance that an insurer or affiliate may write.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4. redesignated A. through C. as (a) through (c); and subdivided present (b) and (c).

**Amendments.** The 2011 amendment

### 23-63-1310. Supplemental provisions — Rules — Exemption.

(a) This subchapter is supplemental to other laws of this state and does not preclude or limit other powers or duties of the Insurance Commissioner under those laws, including without limitation § 23-68-101 et seq.

(b) The commissioner may adopt reasonable rules necessary for the implementation of this subchapter.

(c) The commissioner may exempt from the application of this subchapter a domestic property and casualty insurer licensed to do business in this state that:

(1) Writes direct business only in this state;

(2) Writes direct annual premiums of two million dollars (\$2,000,000) or less; and

(3) Assumes no reinsurance more than five percent (5%) of direct premium written.

**History.** Acts 1995, No. 622, § 1; 1999, No. 625, § 2; 2001, No. 8, § 1; 2011, No. 760, § 4. (c); deleted D; and substituted “a domestic property and casualty insurer” for “any domestic insurer” in the introductory language of (c).

**Amendments.** The 2011 amendment redesignated A. through C. as (a) through

### 23-63-1311. Foreign insurers.

(a) Upon the written request of the Insurance Commissioner, a foreign insurer shall submit to the commissioner an RBC report as of the end of the calendar year just ended the later of:

(1) The date an RBC report would be required to be filed by a domestic insurer under this subchapter; or

(2) Fifteen (15) days after the request is received by the foreign insurer. Any foreign insurer, at the written request of the commissioner, promptly shall submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(b) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to a foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under this subchapter, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the way named under that state’s RBC statute or, if no RBC statute is in force in that state, under § 23-63-1304 the commissioner may require the foreign insurer to file an RBC plan with the



commissioner. In that event, the failure of the foreign insurer to file an RBC plan with the commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this state.

(c) In the event of a mandatory control level event with respect to a foreign insurer, if no domiciliary receiver has been appointed by the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may apply to Pulaski County Circuit Court permitted under § 23-68-101 et seq. with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event is adequate grounds for the application.

**History.** Acts 1995, No. 622, § 1; 2011, redesignated A. through C. as (a) through No. 760, § 4. (c).

**Amendments.** The 2011 amendment

### 23-63-1312. Immunity.

There is no liability by and no cause of action shall arise against the Insurance Commissioner or the State Insurance Department or its employees or agents for action taken by them in the performance of their powers and duties under this subchapter.

**History.** Acts 1995, No. 622, § 1; 2011, substituted “There is no liability by” for No. 760, § 4. “There shall be no liability on the part of”

**Amendments.** The 2011 amendment and deleted “any” following “agents for.”

### 23-63-1313. Authority of commissioner to adopt rules.

The Insurance Commissioner may adopt reasonable rules for the implementation and administration of this subchapter.

**History.** Acts 1995, No. 622, § 1; 2011, deleted “and regulations” following “rules” No. 760, § 4. and deleted “the provisions of” preceding

**Amendments.** The 2011 amendment “this subchapter.”

### 23-63-1314. Penalties and liabilities.

(a) If the Insurance Commissioner, after a hearing conducted according to § 23-61-301 et seq., finds that an insurer or a person has violated this subchapter, the commissioner may order:

(1) For each separate violation, a penalty of one thousand dollars (\$1,000) or if the commissioner has found willful misconduct or willful violation, a penalty of five thousand dollars (\$5,000); and

(2) Revocation or suspension of the insurer’s or person’s license.

(b) The decision of the commissioner under subsection (a) of this section is subject to judicial review under § 23-61-307.

(c) This section does not affect the right of the commissioner to impose other penalties provided for in the insurance laws.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4.  
**Amendments.** The 2011 amendment

deleted “determination or order” following “decision” in (b).

**23-63-1315. [Repealed.]**

**Publisher’s Notes.** This section, concerning a severability clause, was repealed by Acts 2011, No. 760, § 4. The

section was derived from Acts 1995, No. 622, § 1.

**23-63-1316. Notices.**

All notices by the Insurance Commissioner to an insurer that may result in regulatory action under this subchapter shall be effective on dispatch if transmitted by certified mail, or in the case of any other transmission shall be effective on the insurer’s receipt of the notice.

**History.** Acts 1995, No. 622, § 1; 2011, No. 760, § 4.  
**Amendments.** The 2011 amendment

deleted “registered or” preceding “certified mail.”

**SUBCHAPTER 14 — DISCLOSURE OF MATERIAL TRANSACTIONS ACT**

- SECTION.  
23-63-1401. Short title.  
23-63-1402. Report.  
23-63-1403. Acquisitions and dispositions of assets.  
23-63-1404. Nonrenewals, cancellations or revisions of ceded reinsurance agreements.

- SECTION.  
23-63-1405. Rules and regulations.  
23-63-1406. Penalties and liabilities.

**Effective Dates.** Acts 1995, No. 625, § 5: Mar. 14, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws are not sufficient to protect the Arkansas insurance buying public. It is determined that it is in the best interests of the State of Arkansas that the laws in this Act be adopted immediately so that the Arkansas Insurance Department can better regulate the insurance industry. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”  
Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: “It is

found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

**23-63-1401. Short title.**

This subchapter may be cited as the "Disclosure of Material Transactions Act".

**History.** Acts 1995, No. 625, § 1.

**23-63-1402. Report.**

(a) Every insurer domiciled in this state shall file a report with the Insurance Commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of the Arkansas Insurance Code, laws, regulations, or other requirements.

(b) The report required in subsection A is due within fifteen (15) days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments, shall be filed with:

- (1) The insurance department of the insurer's state of domicile; and
- (2) The National Association of Insurance Commissioners.

(d) All reports obtained by or disclosed to the commissioner pursuant to this subchapter, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by publication, in which event the commissioner may publish all or any part in the manner the commissioner may deem appropriate.

**History.** Acts 1995, No. 625, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**23-63-1403. Acquisitions and dispositions of assets.**

(a) **MATERIALITY.** No acquisitions or dispositions of assets need be reported pursuant to § 23-63-1402 if the acquisitions or dispositions are not material. For purposes of this subchapter, a material acquisition or the aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the aggregate of any series of related dispositions during any thirty-day period, is one that is non-recurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as



reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(b) SCOPE.

(1) Asset acquisitions subject to this subchapter include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such a purpose.

(2) Asset dispositions subject to this subchapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

(c) INFORMATION TO BE REPORTED.

(1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(A) Date of the transaction;

(B) Manner of acquisition or disposition;

(C) Description of the assets involved;

(D) Nature and amount of the consideration given or received;

(E) Purpose of, or reason for, the transaction;

(F) Manner by which the amount of consideration was determined;

(G) Gain or loss recognized or realized as a result of the transaction; and

(H) Name(s) of the person(s) from whom the assets were acquired or to whom they were disposed.

(2) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

**History.** Acts 1995, No. 625, § 1.

**23-63-1404. Nonrenewals, cancellations or revisions of ceded reinsurance agreements.**

(a) MATERIALITY AND SCOPE.

(1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported pursuant to § 23-63-1402 if the nonrenewals, cancellations, or revisions are not material. For purposes of this

subchapter, a material nonrenewal, cancellation, or revision is one that affects:

(A) As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(i) More than fifty percent (50%) of the insurer's total ceded written premium; or

(ii) More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves;

(B) As respects life, annuity, and accident and health business, more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; and

(C) As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:

(i) An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one (1) or more unauthorized reinsurers; or

(ii) Previously established collateral requirements have been reduced or waived as respects one (1) or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

(2) However, no filing shall be required if:

(A) As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business; or

(B) As respects life, annuity, and accident and health insurance, the total reserve taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement prior to any cession.

(b) INFORMATION TO BE REPORTED.

(1) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(A) Effective date of the nonrenewal, cancellation, or revision;

(B) The description of the transaction with an identification of the initiator thereof;

(C) Purpose of, or reason for, the transaction; and

(D) If applicable, the identity of the replacement reinsurers.

(2) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded

substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer’s capital and surplus.

**History.** Acts 1995, No. 625, § 1; 2001, No. 1603, § 15.

**23-63-1405. Rules and regulations.**

The Insurance Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this subchapter.

**History.** Acts 1995, No. 625, § 1.

**23-63-1406. Penalties and liabilities.**

(a) If the Insurance Commissioner finds after a hearing conducted in accordance with § 23-61-301 et seq. that any insurer or person has violated any provision of this subchapter, the commissioner may order:

- (1) For each separate violation, a penalty in an amount of one thousand dollars (\$1,000) or, if the commissioner has found willful misconduct or willful violation, five thousand dollars (\$5,000); and
- (2) Revocation or suspension of the insurer’s or person’s license.

(b) The decision, determination, or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance laws.

**History.** Acts 1995, No. 625, § 1.

**SUBCHAPTER 15 — RISK-BASED CAPITAL REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS**

SECTION.	SECTION.
23-63-1501. Definitions.	Prohibition on use in rate-making.
23-63-1502. RBC reports.	23-63-1509. Supplemental provisions — Rules — Exemption.
23-63-1503. Company action level event.	23-63-1510. Foreign health organizations.
23-63-1504. Regulatory action level event.	23-63-1511. Immunity.
23-63-1505. Authorized control level event.	23-63-1512. Notices.
23-63-1506. Mandatory control level event.	23-63-1513. Penalties and liabilities.
23-63-1507. Hearings.	
23-63-1508. Confidentiality and prohibition on announcements —	



**23-63-1501. Definitions.**

As used in this subchapter:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the Insurance Commissioner in accordance with § 23-63-1502(d);

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required;

(3) "Domestic health organization" means:

(A) A health maintenance organization domiciled in this state, as established under § 23-76-107; or

(B) A hospital and medical service corporation as defined in § 23-75-101;

(4) "Foreign health organization" means a health organization licensed to do business in this state but is not domiciled in this state;

(5)(A) "Health organization" means a health maintenance organization, hospital and medical service corporation, limited health service organization, dental or vision plan, hospital, or a medical and dental indemnity or service corporation.

(B) "Health organization" does not include:

(i) An organization that is licensed as either a life and health insurer; or

(ii) A property and casualty insurer that is subject to the life or property and casualty RBC requirements;

(6) "NAIC" means the National Association of Insurance Commissioners;

(7) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as these RBC instructions may be amended by the NAIC according to the procedures adopted by the NAIC;

(8) "RBC level" means a health organization's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC when:

(A) "Authorized control level RBC" means the number determined under the risk-based capital formula according to the RBC instructions;

(B) "Company action level RBC" means, with respect to a health organization, the product of two (2) and its authorized control level RBC;

(C) "Mandatory control level RBC" means the product of seven-tenths (0.7) and the authorized control level RBC; and

(D) "Regulatory action level RBC" means the product of one and five-tenths (1.5) and its authorized control level RBC;

(9) "RBC plan" means a comprehensive financial plan containing the elements specified in § 23-63-1503(b). If the commissioner rejects the RBC plan and it is revised by the health organization with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan";

(10) “RBC report” means the report required in § 23-63-1502; and

(11) “Total adjusted capital” means the sum of:

(A) A health organization’s statutory capital and surplus, such as net worth, as determined according to the statutory accounting applicable to the annual financial statements required to be filed; and

(B) Other items that the RBC instructions may provide.

**History.** Acts 1999, No. 580, § 1; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment subdivided (3) and (5); rewrote (8)(A); inserted present (8)(B) and redesignated former (8)(B) as present (8)(D); deleted

former (8)(C); redesignated former (8)(D) as present (8)(C); substituted “seven-tenths (0.7)” for “.70” in (8)(C); and substituted “one and five-tenths (1.5)” for “1.5” in (8)(D).

### 23-63-1502. RBC reports.

(a)(1) On or before each March 1, the “filing date”, a domestic health organization shall prepare and submit to the Insurance Commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing the information required by the RBC instructions.

(2) A domestic health organization shall file its RBC report:

(A) With the NAIC according to the RBC instructions; and

(B) With the insurance commissioner in a state in which the health organization is authorized to do business if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report by the later of:

(i) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(b) A health organization’s RBC is determined according to the formula stated in the RBC instructions. The formula shall take the following into account and may adjust for the covariance between, determined in each case by applying the factors in the way stated in the RBC instructions:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) Other business risks and other relevant risks as are stated in the RBC instructions.

(c) An excess of capital, including net worth, over the amount produced by the risk-based capital requirements contained in this subchapter and the formulas, schedules, and instructions referenced in this subchapter is desirable in the business of health insurance. Accordingly, health organizations should seek to maintain capital above the RBC levels required by this subchapter. Additional capital is useful in the insurance business and helps to secure a health organization against various risks inherent in or affecting the business of insurance

and not accounted for or only partially measured by the risk-based capital requirements contained in this subchapter.

(d) If a domestic health organization files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as adjusted is referred to as an “adjusted RBC report”.

**History.** Acts 1999, No. 580, § 2; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment subdivided the introductory paragraph of

(a) as present (a)(1) and (a)(2); redesignated former (a)(1) and (a)(2) as (a)(2)(A) and (a)(2)(B); and substituted “including” for “i.e.” in (c).

### **23-63-1503. Company action level event.**

(a) “Company action level event” means any of the following events:

(1) The filing of an RBC report by a health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(2) For the year ending December 31, 2011, and each following year, if a health organization has total adjusted capital that:

(A) Is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3); and

(B) The triggering of the trend test determined in accordance with the trend test calculation included in the health organization’s RBC instructions;

(3) The notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates an event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507; or

(4) If under § 23-63-1507 a health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization’s challenge.

(b) In the event of a company action level event, the health organization shall prepare and submit to the commissioner an RBC plan that shall:

(1) Identify the conditions that contribute to the company action level event;

(2) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;

(3)(A) Provide projections of the health organization’s financial results in the current year and at least the two (2) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory



balance sheets, operating income, net income, capital and surplus, and RBC levels.

(B) The projections for new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of and problems associated with the health organization's business, including without limitation its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case.

(c) The RBC plan shall be submitted:

(1) Within forty-five (45) days after the company action level event; or

(2) If the health organization challenges an adjusted RBC report under § 23-63-1507 within forty-five (45) days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(d)(1) Within sixty (60) days after the submission by a health organization of an RBC plan to the commissioner, the commissioner shall notify the health organization if the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory.

(2) If the commissioner determines the RBC plan is unsatisfactory, the notification to the health organization shall state the reasons for the determination and may state proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner.

(3) Upon notification from the commissioner, the health organization shall prepare a revised RBC plan that may incorporate by reference the revisions proposed by the commissioner and shall submit the revised RBC plan to the commissioner:

(A) Within forty-five (45) days after the notification from the commissioner; or

(B) If the health organization challenges the notification from the commissioner under § 23-63-1507, within forty-five (45) days after a notification to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge.

(e) In the event of a notification by the commissioner to a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner, subject to the health organization's right to a hearing under § 23-63-1507, may specify in the notification that the notification constitutes a regulatory action level event.

(f) Each domestic health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health organization is authorized to do business if:

(1) The state has an RBC provision substantially similar to § 23-63-1508(a); and

(2) The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(A) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(B) The date that the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

**History.** Acts 1999, No. 580, § 3; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment inserted (a)(2) and redesignated the remaining subdivisions accordingly; subdivi-

vided (b)(3); subdivided (d) as present (d)(1) through (d)(3); and redesignated former (d)(1) and (d)(2) as (d)(1)(A) and (d)(1)(B).

### **23-63-1504. Regulatory action level event.**

(a) “Regulatory action level event” means, with respect to a health organization, any of the following events:

(1) The filing of an RBC report by the health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(2) The notification by the Insurance Commissioner to a health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507;

(3) If under § 23-63-1507 the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization’s challenge;

(4) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(5) The failure of the health organization to submit an RBC plan to the commissioner within the time stated in § 23-63-1503(c);

(6) The notification by the commissioner to the health organization that:

(A) The RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and

(B) Notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the determination under § 23-63-1507;

(7) If under § 23-63-1507 the health organization challenges a determination by the commissioner under subdivision (a)(6) of this section, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the challenge;



(8) The notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event according to its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under § 23-63-1507; or

(9) If under § 23-63-1507 the health organization challenges a determination by the commissioner under subdivision (a)(8) of this section, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the challenge.

(b) In the event of a regulatory action level event the commissioner shall:

(1) Require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) Perform an examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the health organization including a review of its RBC plan or revised RBC plan; and

(3) After the examination or analysis, issue a corrective order specifying such corrective actions as the commissioner shall determine are required.

(c) In determining corrective actions, the commissioner may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including without limitation the results of any sensitivity tests undertaken under the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(1) Within forty-five (45) days after the occurrence of the regulatory action level event;

(2) If the health organization challenges an adjusted RBC report under § 23-63-1507 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge; or

(3) If the health organization challenges a revised RBC plan under § 23-63-1507 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge.

(d) The commissioner may retain actuaries, investment experts, and other consultants as may be necessary in the judgment of the commissioner to review the health organization's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations, including contractual relationships, of the health organization and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to consultants shall be borne by the



affected health organization or the other party as directed by the commissioner.

**History.** Acts 1999, No. 580, § 4; 2011, substituted “an order” for “an order, a No. 760, § 5. ‘corrective order’” in (b)(3).

**Amendments.** The 2011 amendment

### **23-63-1505. Authorized control level event.**

(a) “Authorized control level event” means any of the following events:

(1) The filing of an RBC report by the health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(2) The notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507;

(3) If under § 23-63-1507 the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization’s challenge;

(4) The failure of the health organization to respond to a corrective order in a way satisfactory to the commissioner, provided the health organization has not challenged the corrective order under § 23-63-1507; or

(5) If the health organization has challenged a corrective order under § 23-63-1507 and the commissioner, after a hearing, has rejected the challenge or modified the corrective order, the failure of the health organization to respond to a corrective order in a way satisfactory to the commissioner, after rejection or modification by the commissioner.

(b) In the event of an authorized control level event with respect to a health organization, the commissioner shall:

(1) Take the actions as are required under § 23-63-1504 regarding a health organization with respect to which a regulatory action level event has occurred; or

(2)(A) If the commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120.

(B) The authorized control level event is sufficient grounds for the commissioner to exercise the rights, powers, and duties with respect to the health organization under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120.

(C) If the commissioner takes actions under this subdivision (b)(2) pursuant to an adjusted RBC report, the health organization shall be entitled to the protections afforded to health organizations under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120.

**History.** Acts 1999, No. 580, § 5; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment subdivided (b)(2); substituted “the Uniform Insurers Liquidation Act, § 23-68-

101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120” for “rehabilitation and liquidation” in (b)(2)(A), (b)(2)(B), and (b)(2)(C); and rewrote (b)(2)(B).

### **23-63-1506. Mandatory control level event.**

(a) “Mandatory control level event” means any of the following events:

(1) The filing of an RBC report that indicates the health organization’s total adjusted capital is less than its mandatory control level RBC;

(2) The notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507; or

(3) If under § 23-63-1507 the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization’s challenge.

(b) In the event of a mandatory control level event, the commissioner shall take the actions as are necessary to place the health organization under regulatory control under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120. In that event, the mandatory control level event is deemed sufficient grounds for the commissioner to take action under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120, and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120. Notwithstanding any other law, the commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated not later than the ninety-day period.

**History.** Acts 1999, No. 580, § 6; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment, in (b), substituted “the Uniform Insurers Liquidation Act, § 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-

113, and 23-68-115 — 23-68-120” for “rehabilitation and liquidation” three times, substituted “any other law” for “any of the foregoing provisions,” and substituted “not later than the ninety-day period” for “within the ninety-day period.”



**23-63-1507. Hearings.**

On the occurrence of the following events the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge a determination or action by the Insurance Commissioner. The health organization shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subdivisions (1)-(4) of this section. On receipt of the health organization's request for a hearing, the commissioner shall set a date for the hearing which shall be no less than ten (10) nor more than thirty (30) days after the date of the health organization's request. The events include:

(1) The notification to a health organization by the commissioner of an adjusted RBC report;

(2) The notification to a health organization by the commissioner that:

(A) The health organization's RBC plan or revised RBC plan is unsatisfactory; and

(B) The notification constitutes a regulatory action level event with respect to the health organization;

(3) The notification to a health organization by the commissioner that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization according to its RBC plan or revised RBC plan; or

(4) The notification to a health organization by the commissioner of a corrective order with respect to the health organization.

**History.** Acts 1999, No. 580, § 7; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment substituted "the occurrence of the follow-

ing events" for "the occurrence of any of the following events" in the first sentence of the introductory paragraph.

**23-63-1508. Confidentiality and prohibition on announcements  
— Prohibition on use in ratemaking.**

(a) An RBC report, to the extent the information is not required to be stated in a publicly available annual statement schedule, and RBC plans, including the results or report of an examination or analysis of a health organization performed under this subchapter and a corrective order issued by the Insurance Commissioner under examination or analysis, with respect to a domestic health organization or foreign health organization that are filed with the commissioner constitute information that may be damaging to the health organization if made available to its competitors and shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner under this subchapter or any other insurance laws of this state.



(b)(1) It is the judgment of the General Assembly that the comparison of a health organization's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for corrective action with respect to the health organization and is not intended as a means to rank health organizations generally. The making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, of an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of a health organization, or of a component derived in the calculation, by a health organization, agent, broker, or other person engaged in any way in the insurance business would be misleading and is prohibited.

(2) However, if a materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the health organization's RBC levels is published in a written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity or inappropriateness of the statement, the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(c) It is the further judgment of the General Assembly that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in a rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or an affiliate is authorized to write.

**History.** Acts 1999, No. 580, § 8; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment deleted "Therefore, except as otherwise

required under the provisions of this subchapter" preceding "The making" at the beginning of the second sentence of (b)(1).

### 23-63-1509. Supplemental provisions — Rules — Exemption.

(a) The provisions of this subchapter are supplemental to the other provisions of the laws of this state and shall not preclude or limit any other powers or duties of the Insurance Commissioner under those laws.

(b) The commissioner may adopt reasonable rules necessary for the implementation of this subchapter.

(c) The commissioner may exempt from the application of this subchapter:

- (1) A domestic health organization that:
  - (A) Writes direct business only in this state;
  - (B) Assumes no reinsurance in excess of five percent (5%) of direct premium written; and
  - (C) Writes direct annual premiums for comprehensive medical business of two million dollars (\$2,000,000) or less; or
- (2) A domestic health organization that is a limited benefit health maintenance organization.

**History.** Acts 1999, No. 580, § 9; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment redesignated part of the introductory lan-

guage of (c) as (c)(1) and redesignated former (c)(1) as (c)(1)(A); and inserted "A domestic health organization that" at the beginning of (c)(2).

### **23-63-1510. Foreign health organizations.**

(a)(1) On the written request of the Insurance Commissioner, a foreign health organization shall submit to the commissioner an RBC report as of the end of the calendar year just ended that is the later of:

(A) The date an RBC report would be required to be filed by a domestic health organization under this subchapter; or

(B) Fifteen (15) days after the request is received by the foreign health organization.

(2) At the written request of the commissioner, a foreign health organization shall promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(b) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization or, if no RBC statute is in force in that state, under this subchapter, if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the way specified under that state's RBC statute or, if no RBC statute is in force in that state, under § 23-63-1503 the commissioner may require the foreign health organization to file an RBC plan with the commissioner. In this event, the failure of the foreign health organization to file an RBC plan with the commissioner shall be grounds to order the health organization to cease and desist from writing new insurance business in this state.

(c) In the event of a mandatory control level event with respect to a foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statutes applicable in the state of domicile of the foreign health organization, the commissioner may make application under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 —

23-68-120, with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory control level event is considered adequate grounds for the application.

**History.** Acts 1999, No. 580, § 10; 2011, No. 760, § 5.

**Amendments.** The 2011 amendment substituted “the Uniform Insurers Liqui-

dation Act, § 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120” for “rehabilitation and liquidation” in (c).

### 23-63-1511. Immunity.

There shall be no liability by and no cause of action shall arise against the Insurance Commissioner or the State Insurance Department or its employees or agents for any action taken by them in the performance of their powers and duties under this subchapter.

**History.** Acts 1999, No. 580, § 11; 2011, No. 760, § 5.

substituted “liability by” for “liability on the part of.”

**Amendments.** The 2011 amendment

### 23-63-1512. Notices.

A notice by the Insurance Commissioner to a health organization that may result in regulatory action under this subchapter is effective upon:

- (1) Dispatch if transmitted by certified mail; or
- (2) The health organization’s receipt of notice in the case of any other transmission.

**History.** Acts 1999, No. 580, § 12; 2011, No. 760, § 5.

subdivided the section; and deleted “registered or” preceding “certified” in (1).

**Amendments.** The 2011 amendment

### 23-63-1513. Penalties and liabilities.

(a) If the Insurance Commissioner finds after a hearing conducted in accordance with § 23-61-301 et seq. that a health organization has violated this subchapter, the commissioner may order:

(1) For each separate violation, a penalty of one thousand dollars (\$1000) or, if the commissioner has found willful misconduct or willful violation, five thousand dollars (\$5,000); and

(2) Revocation or suspension of the health organization’s license.

(b) The decision, determination, or order of the commissioner under subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.

(c) This section does not affect the right of the commissioner to impose any other penalties provided for in the insurance laws of this state.

**History.** Acts 2011, No. 760, § 5.



## SUBCHAPTER 16 — LICENSING AND REGULATION OF CAPTIVE INSURERS

## SECTION.

- 23-63-1601. Definitions.
- 23-63-1602. Application for license.
- 23-63-1603. Similar names.
- 23-63-1604. Capital requirements.
- 23-63-1605. Surplus requirements.
- 23-63-1606. Organization.
- 23-63-1607. Reporting.
- 23-63-1608. Examinations.
- 23-63-1609. Suspension and revocation.
- 23-63-1610. Investments.
- 23-63-1611. Reinsurance.
- 23-63-1612. Rating organizations.
- 23-63-1613. Pools, plans, associations, and guaranty or insolvency funds.

## SECTION.

- 23-63-1614. Premium tax.
- 23-63-1615. Regulations.
- 23-63-1616. Limitations.
- 23-63-1617. Reorganizations, receiver-ships, and injunctions.
- 23-63-1618. Availability of funds.
- 23-63-1619. Conversions and mergers.
- 23-63-1620. Sponsorship requirements.
- 23-63-1621. Participants.
- 23-63-1622. Producer reinsurance protected cell requirements.
- 23-63-1623. Certificate of authority.

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**Effective Dates.** Acts 2001, No. 1391, § 24: Apr. 5, 2001. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that captive insurers are making a presence in Arkansas and are not currently subject to a comprehensive, specialized regulatory scheme. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 466, § 9: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that captive insurers are making a presence in Arkansas and that the present regulatory scheme places undue burdens on captive insurers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public

peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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**23-63-1601. Definitions.**

As used in this subchapter:

(1) "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management;

(2) "Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed under the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the Insurance Commissioner on companies transacting the business of insurance in the alien jurisdiction;

(3) "Association" means a legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year:

(A) The member organizations of which collectively, or which does itself:

(i) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(ii) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(B) The member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer;

(4) "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies;

(5) "Branch business" means any insurance business transacted by a branch captive insurance company in this state;

(6)(A) "Branch captive insurance company" means an alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(B) A branch captive insurance company must be a pure captive insurance company with respect to operations in this state unless permitted by the commissioner;

(7) "Branch operations" means any business operations of a branch captive insurance company in this state;

(8) "Captive insurance company" means a producer reinsurance captive insurance company, pure captive insurance company, association captive insurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under this subchapter;

(9) "Commissioner" means the Insurance Commissioner;

(10) "Controlled unaffiliated business" means a company:

(A) That is not in the corporate system of a parent and affiliated companies;

(B) That has an existing contractual relationship with a parent or affiliated company; and

(C) Whose risks are managed by a pure captive insurance company;

(11) "Department" means the State Insurance Department;

(12)(A) "Industrial insured" means an insured:

(i) Which procures insurance by use of the services of a full-time employee acting as a risk manager or insurance manager or utilizing the services of a regularly and continuously qualified insurance consultant;

(ii) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and

(iii) Which has at least twenty-five (25) full-time employees.

(B) "Industrial insured" does not mean "industrial life insurance" as used in § 23-82-101 et seq.;

(13)(A) "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that compose the industrial insured group and their affiliated companies.

(B) "Industrial insured captive insurance company" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;

(14)(A) "Industrial insured group" means a group that meets either of the following criteria:

(i) A group of industrial insureds that collectively:

(a) Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(b) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(ii) A group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as it existed January 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., or as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under the Arkansas Insurance Code.

(B) "Industrial insured group" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;

(15) "Member organization" means an individual, corporation, partnership, or association that belongs to an association;

(16) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company;

(17) "Participant" means an entity as defined in § 23-63-1621 and any affiliates of that entity that are insured by a sponsored captive insurance company when the losses of the participant are limited through a participant contract to the assets of a protected cell;

(18) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell;



(19) “Producer reinsurance captive insurance company” means a company that is wholly owned by a resident licensed insurance producer and that acts only as a reinsurer for risks written by or placed through its parent or an affiliate of its parent;

(20) “Protected cell” means a separate account established and maintained by a sponsored captive insurance company for one (1) participant or by a producer reinsurance captive insurance company;

(21) “Pure captive insurance company” means a company that insures risks of its parent and affiliated companies or controlled unaffiliated business;

(22) “Special purpose captive insurance company” means a captive insurance company that is formed or licensed under this chapter and does not meet the definition of any other type of captive insurance company defined in this section;

(23) “Sponsor” means an entity that meets the requirements of § 23-63-1620 and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company; and

(24) “Sponsored captive insurance company” means a captive insurance company:

(A) In which the minimum capital and surplus required is provided by one (1) or more sponsors;

(B) That is formed or licensed under this subchapter;

(C) That insures the risks of separate participants through the contract; and

(D) That segregates each participant’s liability through one (1) or more protected cells.

**History.** Acts 2001, No. 1391, § 1; was originally enacted by Acts 1959, No. 2003, No. 466, § 1; 2005, No. 506, § 30. 148. Acts 1959, No. 148 is codified as set

**Publisher’s Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-63-1602. Application for license.

(a) When permitted by its articles of incorporation or charter, a captive insurance company may apply to the Insurance Commissioner for a license to do all insurance, including workers’ compensation insurance, authorized by the Arkansas Insurance Code. However:

(1) A pure captive insurance company may not insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(2) An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;

(3) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that compose the industrial insured group and their affiliated companies;

(4) A captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component of these coverages;

(5) A captive insurance company may not accept or cede reinsurance except as authorized by § 23-63-1611;

(6) A producer reinsurance captive insurance company may not reinsure any risks other than those written by or placed through its parent or an affiliate of its parent and written by authorized insurers; and

(7) The following statement must appear on the front of every policy or certificate of insurance issued by a captive insurance company:

"THIS CONTRACT IS REGISTERED AND DELIVERED AS A POLICY UNDER ARKANSAS CODE §§ 23-63-1601 THROUGH 23-63-1623. THIS POLICY MAY BE DIFFERENT FROM POLICIES ISSUED IN THE OPEN MARKET. IT MAY BE MORE OR LESS FAVORABLE TO AN INSURED THAN A CONTRACT ISSUED BY AN ADMITTED CARRIER. THE PROTECTION OF THE ARKANSAS PROPERTY AND CASUALTY INSURANCE GUARANTY ACT, ARKANSAS CODE §§ 23-90-101 THROUGH 23-90-123, DOES NOT APPLY TO THIS CONTRACT."

(b) To conduct insurance business in this state, a captive insurance company shall:

(1) Be licensed to conduct insurance business in this state;

(2) Hold at least one (1) board of directors meeting, or in the case of a reciprocal insurer, a subscriber's advisory committee meeting, each year in this state;

(3) Maintain its registered office in this state, or in the case of a branch captive insurance company, maintain the registered office for its branch operations in this state; and

(4)(A) Appoint a resident registered agent to accept service of process and to act on its behalf in this state.

(B) In the case of a captive insurance company formed as a corporation or formed as a reciprocal insurer, the commissioner must be designated as the agent of the captive insurance company upon whom any process, notice, or demand may be served whenever the registered agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company.

(c)(1) Before receiving a license, a captive insurance company:

(A) Formed as a corporation shall file with the commissioner:

(i) A certified copy of its articles of incorporation and bylaws;

(ii) A statement under oath of its president and secretary showing its financial condition; and

(iii) Any other statements or documents required by the commissioner; or

(B) Formed as a reciprocal shall:

(i) File with the commissioner:



- (a) A certified copy of the power of attorney of its attorney in fact;
- (b) A certified copy of its subscribers' agreement;
- (c) A statement under oath of its attorney in fact showing its financial condition; and

(d) Any other statements or documents required by the commissioner; or

(ii)(a) Obtain the commissioner's approval of its coverages, deductibles, coverage limits, and rates.

(b) If there is a subsequent material change in an item in the description, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner.

(c) The reciprocal captive insurance company shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of the change.

(2) In addition to the information required by subdivision (c)(1) of this section, a captive insurance company applying for a license shall file with the commissioner evidence of:

(A) The amount and description of its assets relative to the risks to be assumed;

(B) The adequacy of the expertise, experience, and character of the person or persons who will manage it;

(C) The overall soundness of its plan of operation;

(D) The adequacy of the loss-prevention programs of its parent, member organizations, or industrial insureds, as applicable; and

(E) Other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) In addition to the information required by subdivisions (c)(1) and (2) of this section, an applicant producer reinsurance captive insurance company or a sponsored captive insurance company shall file with the commissioner:

(A) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell in as much detail as the commissioner may require, and the manner in which it will report the experience to the commissioner;

(B) A statement acknowledging that all financial records of the captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner; and

(C) Evidence that expenses will be allocated to each protected cell in an equitable manner.

(4) In addition to the information required by subdivisions (c)(1)-(3) of this section, a sponsored captive insurance company shall file with the commissioner all contracts between the sponsored captive insurance company and any participants.

(5) Information submitted under this subsection is confidential and may not be made public by the commissioner or an agent or employee



of the commissioner without the written consent of the company except that:

(A)(i) Information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:

(a) The information sought is relevant to and necessary for the furtherance of the action or case;

(b) The information sought is unavailable from other nonconfidential sources; and

(c) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner.

(ii) However, subdivision (c)(4) of this section does not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group; and

(B) The commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:

(i) The public official agrees in writing to maintain the confidentiality of the information; and

(ii) The laws of the state in which the public official serves require the information to be confidential.

(d)(1) A captive insurance company shall pay to the State Insurance Department Trust Fund a nonrefundable fee in an amount and manner to be prescribed by regulation.

(2) The commissioner may retain legal, financial, and examination services from outside the State Insurance Department, the reasonable cost of which may be charged against the applicant.

(3) Section 23-61-208 applies to examinations, investigations, and processing conducted under the authority of this section.

(4) In addition, a captive insurance company shall pay to the fund a license fee for the year of registration and a renewal fee in an amount and manner to be prescribed by regulation.

(e) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this subchapter, the commissioner may grant a license authorizing the company to do insurance business in this state until March 1, at which time the license may be renewed.

**History.** Acts 2001, No. 1391, § 2; 2003, No. 466, § 2.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### 23-63-1603. Similar names.

A captive insurance company may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this state.

**History.** Acts 2001, No. 1391, § 3.

### **23-63-1604. Capital requirements.**

(a)(1) The Insurance Commissioner may not issue a license to a producer reinsurance captive insurance company, pure captive insurance company, sponsored captive insurance company, association captive insurance company incorporated as a stock insurer, or industrial insured captive insurance company incorporated as a stock insurer unless the company possesses and maintains unimpaired paid-in capital of:

(A) In the case of a producer reinsurance captive insurance company, not less than three hundred thousand dollars (\$300,000);

(B) In the case of a pure captive insurance company, not less than one hundred thousand dollars (\$100,000);

(C) In the case of an association captive insurance company incorporated as a stock insurer, not less than four hundred thousand dollars (\$400,000);

(D) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than two hundred thousand dollars (\$200,000);

(E) In the case of a sponsored captive insurance company, not less than five hundred thousand dollars (\$500,000); or

(F) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than three hundred thousand dollars (\$300,000).

(2) The capital may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

(b)(1) The commissioner may prescribe additional capital based upon the type, volume, and nature of insurance business transacted.

(2) This capital may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System.

(c)(1) In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations.

(2)(A) The amount of the security may be no less than the capital and surplus required by this subchapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through branch operations.

(B)(i) The commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer.

(ii) If the form of security selected is a letter of credit, the letter of credit must be issued by a bank chartered in this state or a member bank of the Federal Reserve System.

(d)(1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in § 23-63-515, without the prior approval of the commissioner.

(2) Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the commissioner.

(3) This subsection (d) shall not apply to producer reinsurance captive insurance companies.

**History.** Acts 2001, No. 1391, § 4;  
2003, No. 466, § 3.

### **23-63-1605. Surplus requirements.**

(a)(1) The Insurance Commissioner may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

(A) In the case of a producer reinsurance captive insurance company, not less than three hundred thousand dollars (\$300,000);

(B) In the case of a pure captive insurance company, not less than one hundred fifty thousand dollars (\$150,000);

(C) In the case of an association captive insurance company incorporated as a stock insurer, not less than three hundred fifty thousand dollars (\$350,000);

(D) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than three hundred thousand dollars (\$300,000);

(E) In the case of an association captive insurance company incorporated as a mutual insurer, not less than seven hundred fifty thousand dollars (\$750,000);

(F) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than five hundred thousand dollars (\$500,000);



(G) In the case of a sponsored captive insurance company, not less than five hundred thousand dollars (\$500,000); and

(H) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than three hundred thousand dollars (\$300,000).

(2) The surplus may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

(b) Notwithstanding the requirements of subsection (a) of this section, a captive insurance company organized as a reciprocal insurer under this subchapter may not be issued a license unless it possesses and maintains a free surplus of one million dollars (\$1,000,000).

(c)(1) The commissioner may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted.

(2) This capital may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System.

(d)(1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in § 23-63-515, without the prior approval of the commissioner.

(2) Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention at the time of each payment of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the commissioner.

(3) This subsection (d) shall not apply to a producer reinsurance captive insurance company.

**History.** Acts 2001, No. 1391, § 5;  
2003, No. 466, § 4.

### **23-63-1606. Organization.**

(a) A producer reinsurance captive insurance company, pure captive insurance company, or a sponsored captive insurance company must be incorporated as a domestic stock insurer under § 23-69-206 with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company or an industrial insured captive insurance company may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association; or

(3) Organized as a reciprocal insurer under § 23-70-101 et seq.

(c) A captive insurance company shall have at least one (1) incorporator.

(d) The alien captive insurance company may register to do business in this state after the Insurance Commissioner's certificate has been issued.

(e) The capital stock of a captive insurance company incorporated as a stock insurer must be issued at not less than par value.

(f) At least one (1) of the members of the board of directors of a captive insurance company formed as a corporation in this state must be a resident of the United States or a United States territory.

(g) At least one (1) of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer must be a resident of the United States or a United States territory.

(h)(1) A captive insurance company formed as a corporation under this subchapter has the privileges of and is subject to the general corporation law of this state and applicable provisions of this subchapter.

(2) If a conflict occurs between general corporation law and this subchapter, the latter controls.

(3)(A) The Arkansas Insurance Code concerning mergers, consolidations, conversions, mutualizations, and redomestications applies in determining the procedures to be followed by a captive insurance company in carrying out any of those transactions.

(B) The commissioner may waive or modify the requirements for public notice and hearing in accordance with regulations that the commissioner may promulgate addressing categories of transactions.

(C) If a notice of public hearing is required but no one requests a hearing, the commissioner may cancel the hearing.

(i)(1)(A) A captive insurance company formed as a reciprocal insurer under this subchapter is subject to § 23-70-101 et seq. and applicable provisions of this subchapter.

(B) If a conflict occurs between § 23-70-101 et seq. and this subchapter, the latter controls.

(C) To the extent a reciprocal insurer is made subject to the Arkansas Insurance Code under § 23-70-101 et seq., the Arkansas Insurance Code is not applicable to a reciprocal insurer formed under this subchapter unless expressly made applicable to a captive insurance company by this subchapter.

(2) In addition to subdivision (i)(1) of this section, a captive insurance company organized as a reciprocal insurer that is an industrial insured group is subject to § 23-70-101 et seq. and applicable provisions of the Arkansas Insurance Code.

(j) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no

fewer than one-third ( $\frac{1}{3}$ ) of the fixed or prescribed number of directors under § 4-27-824(b).

(k) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third ( $\frac{1}{3}$ ) of the number of its members.

**History.** Acts 2001, No. 1391, § 6; was originally enacted by Acts 1959, No. 2003, No. 466, § 4; 2005, No. 1962, § 107. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### 23-63-1607. Reporting.

(a) A captive insurance company shall not be required to make an annual report, except as provided under this subchapter.

(b)(1) Before March 1 of each year, a captive insurance company shall submit to the Insurance Commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.

(2)(A) Except as provided in §§ 23-63-1604 and 23-63-1605, a captive insurance company shall report using generally accepted accounting principles unless the commissioner approves the use of statutory accounting principles.

(B) The commissioner may require, approve, or accept appropriate modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, supplemented by additional information.

(3)(A) Unless provided otherwise:

(i) An association captive insurance company shall file its report in the form required by § 23-63-216(a); and

(ii) An industrial insured group shall:

(a) File its report in the form required by § 23-63-216(a); and

(b) Comply with § 23-63-216(b)(1).

(B) The commissioner shall prescribe by regulation the forms in which producer reinsurance captive insurance companies, pure captive insurance companies, and industrial insured captive insurance companies shall report.

(c) A producer reinsurance captive insurance company or a pure captive insurance company may apply to file the required report on a fiscal year-end that is consistent with the parent company's fiscal year. If an alternative reporting date is granted:

(1) The annual report is due no later than sixty (60) days after the fiscal year-end; and

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company shall file before March 1 of each year for each calendar year-end pages one (1), two (2), three (3), and five (5) of the "Captive Annual Statement: Pure or Industrial Insured", verified by oath of two (2) of its executive officers.

(d)(1) Sixty (60) days after the fiscal year-end, a branch captive insurance company shall file with the commissioner a copy of all reports



and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two (2) of its executive officers.

(2)(A) If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

(B) The waiver must be in writing and subject to public inspection.

**History.** Acts 2001, No. 1391, § 7; **Amendments.** The 2009 amendment 2003, No. 466, § 6; 2009, No. 726, § 23. rewrote (b)(3)(A).

### **23-63-1608. Examinations.**

(a)(1) At least one (1) time every three (3) years, or whenever the Insurance Commissioner determines it to be prudent, the commissioner or a person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this subchapter.

(2) Upon application, the commissioner may enlarge the three-year period to a five-year period, if a captive insurance company is subject during that period to a comprehensive annual audit by independent auditors approved by the commissioner of a scope satisfactory to the commissioner.

(3) The expenses and charges of the examination must be paid to the state by the company or companies examined, in accordance with the Arkansas Insurance Code.

(b)(1) All examination reports, preliminary examination reports or results, working papers, recorded information, and documents and copies of documents produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section, are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection.

(2) Nothing in this subsection prevents the commissioner from using this information in furtherance of the commissioner's regulatory authority under the Arkansas Insurance Code.

(3) The commissioner may grant access to this information under § 23-61-107 or to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(c)(1)(A) This section applies to all business written by a captive insurance company.

(B) The examination for a branch captive insurance company must be of branch business and branch operations only, as long as the branch captive insurance company:

(i) Provides annually to the commissioner a certificate of compliance or its equivalent issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed; and

(ii) Demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.

(2) As a condition of licensure, the alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

(d) To the extent that § 23-61-201 et seq. does not contradict this section, § 23-61-201 et seq. applies to captive insurance companies licensed under this subchapter.

**History.** Acts 2001, No. 1391, § 8.

was originally enacted by Acts 1959, No.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-1609. Suspension and revocation.**

(a) The license of a captive insurance company to conduct an insurance business in this state may be penalized, suspended, or revoked by the Insurance Commissioner for:

(1) Insolvency or impairment of capital or surplus;

(2) Failure to meet the requirements of §§ 23-63-1604 and 23-63-1605;

(3) Refusal or failure to submit an annual report, as required by § 23-63-1607, or any other report or statement required by law or by lawful order of the commissioner;

(4) Failure to comply with its own charter, bylaws, or other organizational document;

(5) Failure to submit to examination or any legal obligation relative to an examination, as required by § 23-63-1608;

(6) Refusal or failure to pay the cost of examination as required by § 23-63-1608;

(7) Use of methods that, although not specifically prohibited by law, render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

(8) Failure to comply with the laws of this state.

(b) If upon examination, hearing, or other evidence the commissioner finds that a captive insurance company has committed any of the acts specified in subsection (a) of this section, the commissioner may penalize, suspend, or revoke the license if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company.

**History.** Acts 2001, No. 1391, § 9.

### **23-63-1610. Investments.**

(a)(1) Except as provided in § 23-63-1614, an association captive insurance company, a producer reinsurance captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in the Arkansas Insurance Code.

(2) The Insurance Commissioner may approve the use of alternative reliable methods of valuation and rating.

(b)(1) A pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in the Arkansas Insurance Code.

(2) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(c)(1) Only a pure captive insurance company may make loans to its parent company or affiliates, with the prior written approval of the commissioner and evidenced by a note in a form approved by the commissioner.

(2) Loans of minimum capital and surplus funds required by §§ 23-63-1604(a) and 23-63-1605(a) are prohibited.

**History.** Acts 2001, No. 1391, § 10.

was originally enacted by Acts 1959, No.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-1611. Reinsurance.**

(a) A captive insurance company may provide reinsurance under the Arkansas Insurance Code, on risks ceded by any other insurer.

(b)(1) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the Arkansas Insurance Code.

(2) A captive insurer may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with the Arkansas Insurance Code.

**History.** Acts 2001, No. 1391, § 11.

was originally enacted by Acts 1959, No.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-1612. Rating organizations.**

A captive insurance company may not be required to join a rating organization.

**History.** Acts 2001, No. 1391, § 12.



**23-63-1613. Pools, plans, associations, and guaranty or insolvency funds.**

(a) A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this subchapter, shall not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state.

(b) A captive insurance company, its insured, its parent, any affiliated company, any member organization of its association or, in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company shall not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company.

**History.** Acts 2001, No. 1391, § 13.

**23-63-1614. Premium tax.**

(a) Except as provided in this section, a captive insurance company shall pay to the Insurance Commissioner by March 1 of each year, a tax at the rate of:

(1) Four-tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000);

(2) Three-tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000);

(3) Two-tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000); and

(4) Seventy-five thousandths of one percent (.075%) on each dollar thereafter,

on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b)(1) Except as provided in this section, a captive insurance company shall pay to the commissioner by March 1 of each year, a tax at the rate of:

(A) Two hundred twenty-five thousandths of one percent (.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premium;

(B) One hundred fifty thousandths of one percent (.150%) on the next twenty million dollars (\$20,000,000);

(C) Fifty thousandths of one percent (.050%) on the next twenty million dollars (\$20,000,000); and

(D) Twenty-five thousandths of one percent (.025%) of each dollar thereafter.

(2) No reinsurance tax applies to premiums for risks or portions of risks that are subject to taxation on a direct basis under subsection (a) of this section.

(3) A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control, if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

(c) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (a) and (b) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurance company shall pay a tax of five thousand dollars (\$5,000) for that year.

(d) A captive insurance company failing to make returns or to pay all taxes required by this section is subject to relevant sanctions under the Arkansas Insurance Code.

(e) Two (2) or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(f) As used in this section, "common ownership and control" means:

(1) In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and

(2) In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.

(g) In the case of a branch captive insurance company, the tax under this section applies only to the branch business of the company.

(h)(1) The tax under this section constitutes all taxes collectible under the laws of this state from a captive insurance company.

(2) No other tax may be levied or collected from a captive insurance company by this state or a county, city, or municipality of this state, except ad valorem taxes on real and personal property used in the production of income.

(i) This section shall not apply to any producer reinsurance captive insurance company that invests and continuously maintains not less than fifty percent (50%) of its assets in certificates of deposit of any bank organized under the laws of the United States with a banking facility in the State of Arkansas or any federally insured bank or savings institution organized under the laws of the State of Arkansas, or in bonds, notes, warrants, or other securities, not in default, that are direct obligations of:

(1) This state;

(2) Any county, incorporated city or town, or duly organized school district or other taxing district of this state:

(A) If no default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment; or

(B) If the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other public obligation of the obligor within five (5) years of the investment; or

(3) Any local improvement district in this state to finance local improvements authorized by law, if the principal and interest of the obligations are payable from assessments on real property within the local improvement district, and:

(A) No default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment; or

(B) If the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other public obligation of the obligor within five (5) years of the investment.

**History.** Acts 2001, No. 1391, § 14; was originally enacted by Acts 1959, No. 2003, No. 466, § 7. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### 23-63-1615. Regulations.

(a) The Insurance Commissioner may promulgate regulations relating to captive insurance companies as are necessary to carry out this subchapter.

(b)(1) The commissioner may promulgate regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

(2) Prior to these regulations being promulgated, the commissioner may grant, by temporary order, authority to a pure captive insurance company to insure risks.

**History.** Acts 2001, No. 1391, § 15.

### 23-63-1616. Limitations.

(a) The Arkansas Insurance Code does not apply to captive insurance companies except for those provisions contained in or specifically referenced in this subchapter that are to be incorporated into the Arkansas Insurance Code.

(b) The Insurance Commissioner may exempt by rule, regulation, or other order special purpose captive insurance companies on a case-by-case basis from the provisions of this chapter that he or she determines to be inappropriate, given the nature of the risks to be insured.

**History.** Acts 2001, No. 1391, § 16; was originally enacted by Acts 1959, No. 2003, No. 466, § 8. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.



**23-63-1617. Reorganizations, receiverships, and injunctions.**

Except as provided in this subchapter, the terms and conditions in the Arkansas Insurance Code pertaining to insurance reorganizations, receiverships, and injunctions apply to captive insurance companies formed or licensed under this subchapter.

**History.** Acts 2001, No. 1391, § 17.

was originally enacted by Acts 1959, No.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**23-63-1618. Availability of funds.**

In the case of a producer reinsurance captive insurance company or a sponsored captive insurance company:

(1) The assets of the protected cell may not be used to pay any expenses or claims other than those attributable to the protected cell; and

(2) Its capital and surplus must be available to pay any expenses of or claims against the captive insurance company at all times.

**History.** Acts 2001, No. 1391, § 18.

**23-63-1619. Conversions and mergers.**

(a) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan and this section.

(b) A plan for conversion or merger:

(1) Must be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and

(2) Shall provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder or a dissenting policyholder under § 4-26-1011.

(c) In the case of a conversion authorized under subsection (a) of this section:

(1) The conversion must be accomplished under a reasonable plan and procedure as may be approved by the Insurance Commissioner;

(2) The commissioner may not approve the plan of conversion, unless the plan:

(A) Satisfies subsection (b) of this section;

(B)(i) Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.

(ii)(a) The commissioner may waive or modify the requirements for the hearing.

(b) If a notice of hearing is required but no hearing is requested, the commissioner may cancel the hearing;

(C) Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests in the stock or mutual insurer; and

(D) Is approved:

(i) In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or

(ii) In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;

(3) The commissioner shall approve the plan of conversion, if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in § 23-63-1606(f);

(4) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney in fact;

(5) Upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and

(6) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease.

(d) A merger authorized under subsection (a) of this section must be accomplished substantially in accordance with the Arkansas Insurance Code. For purposes of the merger:

(1) The plan or merger shall satisfy subsection (b) of this section;

(2) The subscribers' advisory committee of a reciprocal insurer must be equivalent to the board of directors of a stock or mutual insurance company;

(3) The subscribers of a reciprocal insurer must be the equivalent to the policyholders of a mutual insurance company;

(4) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are deemed to be the president and secretary of the committee;

(5)(A) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in § 23-63-1606(f).

(B) If the commissioner approves the articles of merger, the commissioner shall endorse the articles;

(6)(A) Notwithstanding § 23-63-1604, the commissioner may permit the formation without surplus of a captive insurance company organized as a reciprocal insurer into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section.

(B) There may be no more than one (1) authorized insurance company surviving the merger; and

(7)(A) An alien insurer may be a party to a merger authorized under subsection (a) of this section, if the requirements for the merger between a domestic and a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., apply to a merger between a domestic and an alien insurer under this subsection.

(B) The alien insurer must be treated as a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and other jurisdictions must be the equivalent of a state for purposes of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.

(e) A conversion or merger under this section has all the effects of a conversion or merger under the Arkansas Insurance Code, to the extent these effects are not inconsistent with this subchapter.

**History.** Acts 2001, No. 1391, § 19; 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 1007" in (b)(2). **Amendments.** The 2009 amendment substituted "§ 4-26-1011" for "§ 4-26-1007" in (b)(2).

### 23-63-1620. Sponsorship requirements.

(a) One (1) or more sponsors may form a sponsored captive insurance company under this subchapter.

(b) A sponsor of a sponsored captive insurance company must be:

(1) An insurer licensed under the laws of any state;

(2) A reinsurer authorized or approved under the laws of any state;

(3) A captive insurance company formed or licensed under this subchapter; or

(4) Any other corporation, if approved by the Insurance Commissioner, in a manner to be prescribed by regulation.

(c) The business written by a sponsored captive insurance company must be fronted by an insurance company licensed under the laws of any state.

(d) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

(e) A sponsored captive insurance company formed or licensed under this subchapter may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:

(1) The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors;

(2) Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and



other factors provided for in the participant contract or required by the commissioner;

(3) The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) No sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;

(5)(A) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval.

(B) In no event may the commissioner's approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

(6) A sponsored captive insurance company shall file annually all the financial reports the commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell;

(7) A sponsored captive insurance company shall notify the commissioner in writing within ten (10) business days of a protected cell that is insolvent or unable to meet its claim or expense obligations; and

(8)(A) No participant contract shall take effect without the commissioner's prior written approval.

(B) The addition of each new protected cell and the withdrawal of any participant of any existing protected cell constitute a change in the business plan requiring the commissioner's prior written approval.

**History.** Acts 2001, No. 1391, § 20.

### **23-63-1621. Participants.**

(a) An association, corporation, limited liability company, partnership, trust, or other business entity may be a participant in a sponsored captive insurance company formed or licensed under this subchapter.

(b) A sponsor may be a participant in a sponsored captive insurance company.

(c) A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.

(d) A participant shall insure only its own risks through a sponsored captive insurance company.

**History.** Acts 2001, No. 1391, § 21.

### **23-63-1622. Producer reinsurance protected cell requirements.**

A producer reinsurance captive insurance company formed or licensed under this subchapter may establish and maintain one (1) or more protected cells to insure risks, subject to the following conditions:

- (1) Each protected cell must be accounted for separately on the books and records of the producer reinsurance captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions, and other factors as may be required by the commissioner;
- (2) The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the producer reinsurance captive insurance company may conduct;
- (3) No sale, exchange, or other transfer of assets may be made by the producer reinsurance captive insurance company between or among any of its protected cells without the consent of the protected cells;
- (4) A producer reinsurance captive insurance company shall file annually the financial reports the Insurance Commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell; and
- (5) A producer reinsurance captive insurance company shall notify the commissioner in writing within ten (10) business days of a protected cell that is insolvent or unable to meet its claim or expense obligations.

**History.** Acts 2001, No. 1391, § 22.

**23-63-1623. Certificate of authority.**

A licensed captive insurance company that meets the necessary requirements of the Arkansas Insurance Code, imposed upon an insurer may be considered for issuance of a certificate of authority to act as an insurer in this state.

**History.** Acts 2001, No. 1391, § 23.

**Publisher’s Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**SUBCHAPTER 17 — PROTECTED CELL COMPANY ACT**

SECTION.	SECTION.
23-63-1701. Short title.	23-63-1707. Conservation, rehabilitation, or liquidation of protected cell companies.
23-63-1702. Purpose.	23-63-1708. No transaction of an insurance business.
23-63-1703. Definitions.	23-63-1709. Authority to adopt regulations.
23-63-1704. Establishment of protected cells.	
23-63-1705. Use and operation of protected cells.	
23-63-1706. Reach of creditors and other claimants.	

**Effective Dates.** Acts 2001, No. 1428, § 10: Apr. 9, 2001. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the creation and operation of protected cells are essential to the regulation of sponsored captive insurers and producer reinsurance captive insurers since these insurers are not subject to the guaranty fund. Therefore, an emergency

is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the

expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

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### **23-63-1701. Short title.**

This subchapter may be cited as the "Protected Cell Company Act".

**History.** Acts 2001, No. 1428, § 1.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### **23-63-1702. Purpose.**

This subchapter provides:

(1) A basis for the creation of protected cells by a domestic insurer as one means of accessing alternative sources of capital and achieving the benefits of insurance securitization;

(2) Funds to investors in fully funded insurance securitization transactions that are available to pay the insurer's insurance obligations or to repay the investors, or both; and

(3) A means to achieve more efficiencies in conducting insurance securitizations.

**History.** Acts 2001, No. 1428, § 2.

### **23-63-1703. Definitions.**

For the purposes of this subchapter:

(1) "Domestic insurer" means an insurer domiciled in the State of Arkansas;

(2) "Fully funded" means that, with respect to any exposure attributed to a protected cell, the fair value of the protected cell assets on the date on which the insurance securitization is effected equals or exceeds the maximum possible exposure attributable to the protected cell with respect to such exposures;

(3) "General account" means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities;

(4) "Indemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered by incurring a specified level of losses under its insurance or reinsurance contracts;



(5)(A) "Fair value" of an asset or liability means the amount at which that asset or liability could be bought, incurred, sold, or settled in a current transaction between willing parties that is not a forced or liquidation sale.

(B)(i) Quoted market prices in active markets are the best evidence of fair value and shall be used as the basis for the measurement, if available.

(ii) If a quoted market price is available, the fair value is the product of the number of trading units multiplied by the market price.

(iii) If quoted market prices are not available, the estimate of fair value shall be based on the best information available.

(iv)(a) The estimate of fair value shall consider prices for similar assets and liabilities and the results of valuation techniques to the extent available in the circumstances.

(b) Examples of valuation techniques include the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved, option-pricing models, matrix pricing, option-adjusted spread models, and fundamental analysis.

(c) Valuation techniques for measuring financial assets and liabilities and for servicing assets and liabilities shall be consistent with the objective of measuring fair value. Those techniques shall incorporate assumptions that market participants would use in their estimates of values, future revenues, and future expenses, including assumptions about interest rates, default, prepayment, and volatility.

(d) In measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, an objective is to use discount rates at which those liabilities could be settled in an arm's-length transaction.

(e)(1) Estimates of expected future cash flows, if used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections.

(2) All available evidence shall be considered in developing estimates of expected future cash flows.

(3) The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively.

(4) If a range is estimated for either the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of future cash flows;

(6) "Nonindemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company's incurring a specified level of losses under its insurance or reinsurance contracts;

(7) "Protected cell" means an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of this subchapter from the remainder of the protected cell company's assets and liabilities;

(8) "Protected cell account" means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company's general account;

(9) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell company;

(10) "Protected cell company" means a domestic insurer that has one (1) or more protected cells;

(11) "Protected cell company insurance securitization" means:

(A) The issuance of debt instruments by a protected cell company from which the proceeds support the exposures attributed to the protected cell; and

(B) The repayment of principal or interest, or both, to investors under the transaction terms is contingent upon the occurrence or nonoccurrence of an event which exposes the protected cell company to loss under insurance or reinsurance contracts it has issued; and

(12) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company.

**History.** Acts 2001, No. 1428, § 3.

### **23-63-1704. Establishment of protected cells.**

(a)(1) A protected cell company may establish one (1) or more protected cells by submitting a plan of operation, or amendments to a plan, with respect to each protected cell in connection with an insurance securitization to the Insurance Commissioner for prior written approval.

(2) The plan shall include, but not be limited to:

(A) The specific business objectives of the protected cell; and

(B) The investment guidelines of the protected cell.

(3) Upon receiving written approval, the protected cell company, in accordance with the approved plan of operation, may attribute to the protected cell insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the obligations.

(4) A protected cell shall have its own distinct name or designation, which shall include the words "protected cell".

(5) The protected cell company shall transfer all assets attributable to a protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(6) Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(b)(1) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the commissioner.

(2) No other attribution of assets or liabilities may be made by a protected cell company between the protected cell company's general account and its protected cells.

(3) Any attribution of assets and liabilities between the general account and a protected cell or from investors, in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company securitization, shall be in cash or in readily marketable securities with established market values.

(c)(1) The creation of a protected cell does not create, in respect to that protected cell, a legal person separate from the protected cell company.

(2)(A) Amounts attributed to a protected cell under this subchapter, including assets transferred to a protected cell account, are owned by the protected cell company.

(B) The protected cell company may not be, nor hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account.

(3) The protected cell company, however, may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell if allowed by applicable law.

(d)(1) This subchapter does not prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell.

(2) All remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell, and not from the protected cell assets of other protected cells or the assets of the protected cell company's general account.

(e)(1) A protected cell company shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the protected cell company and the protected cell assets and liabilities attributable to the protected cells. It shall be the duty of the directors of a protected cell company to:

(A) Keep protected cell assets and liabilities separate and separately identifiable from the assets and liabilities of the protected cell company's general account; and

(B) Keep protected cell assets and liabilities attributable to one protected cell separate and separately identifiable from protected cell assets and liabilities attributable to other protected cells.

(2)(A) If this subsection is violated, the remedy of tracing shall be applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account.



(B) The remedy of tracing shall not be an exclusive remedy.

(f) When establishing a protected cell, the protected cell company shall attribute to the protected cell, assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

**History.** Acts 2001, No. 1428, § 4.

### **23-63-1705. Use and operation of protected cells.**

(a)(1) The protected cell assets of a protected cell may not be charged with liabilities arising out of any other business the protected cell company may conduct.

(2) All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities.

(b)(1) The income, gains, and losses, realized or unrealized, from protected cell assets and liabilities shall be credited to or charged against the protected cell without regard to other income, gains, or losses of the protected cell company, including income, gains, or losses of other protected cells.

(2)(A) Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested without regard to any requirements or limitations of § 23-63-801 et seq.

(B) The investments in a protected cell or cells shall not be taken into account in applying the investment limitations applicable to the investments of the protected cell company.

(c) Assets attributed to a protected cell shall be valued at their fair value on the date of valuation.

(d)(1) A protected cell company, in respect to its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell.

(2) A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization after the Insurance Commissioner adopts regulations addressing the methods of funding the portion of the risk that is not indemnity based, accounting, disclosure, risk-based capital treatment, and assessing risks associated with such securitizations.

(3) A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited.

(4)(A) Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell.

(B) Nothing in this subsection shall prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

(e)(1) In all protected cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed.

(2) The contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell.

(3) Failure to include the language required by this subsection in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this subchapter.

(f)(1) A protected cell company shall be authorized to attribute to a protected cell account only the insurance obligations relating to the protected cell company's general account.

(2) A protected cell shall not be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or to have any obligation to the policyholders or reinsureds of the protected cell company's general account.

(g) At the cessation of business of a protected cell, the protected cell company shall voluntarily close out the protected cell account.

**History.** Acts 2001, No. 1428, § 5.

### **23-63-1706. Reach of creditors and other claimants.**

(a)(1)(A) Protected cell assets shall be available only to the creditors of the protected cell company that are creditors to that protected cell.

(B) Those creditors shall be entitled to have recourse to the protected cell assets attributable to that protected cell and shall be absolutely protected from the creditors of the protected cell company that are not creditors in respect to that protected cell.

(C) Creditors of a protected cell shall not be entitled to have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account.

(2) Protected cell assets shall be available only to creditors of a protected cell company after all protected cell liabilities have been extinguished or as provided for in the plan of operation relating to that protected cell.

(b) When an obligation of a protected cell company to a person arises from a transaction, or is otherwise imposed, in respect to a protected cell, that obligation of the protected cell company:

(1) Shall extend only to the protected cell assets attributable to that protected cell, and, with respect to that obligation, the person shall be entitled to have recourse only to the protected cell assets attributable to that protected cell; and

(2) Shall not extend to the protected cell assets of any other protected cell or the assets of the protected cell company's general account, and, with respect to that obligation, that person shall not be entitled to have

recourse to the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

(c) When an obligation of a protected cell company relates solely to the general account, the obligation of the protected cell company shall extend only to, and that creditor shall be entitled, with respect to that obligation, to have recourse only to the assets of the protected cell company's general account.

(d)(1) The activities, assets, and obligations relating to a protected cell are not subject to the laws of this state governing life and health and property and casualty guaranty or insolvency funds.

(2) A protected cell or a protected cell company shall not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this state with respect to the activities, assets, or obligations of a protected cell.

(3) This subsection shall not affect the activities or obligations of an insurer's general account.

(e) The establishment of one (1) or more protected cells alone shall not be deemed to be a fraudulent conveyance, an intent by the protected cell company to defraud creditors, or the carrying out of business by the protected cell company for any other fraudulent purpose.

**History.** Acts 2001, No. 1428, § 6.

### **23-63-1707. Conservation, rehabilitation, or liquidation of protected cell companies.**

(a) Notwithstanding any provision of the Arkansas Insurance Code or any regulation promulgated under the Arkansas Insurance Code or any other applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of a protected cell company, the receiver shall be bound to deal with the protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, in conformance with this subchapter.

(b) With respect to amounts recoverable under a protected cell company insurance securitization, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding any provision in the contracts or other documentation governing the protected cell company insurance securitization.

**History.** Acts 2001, No. 1428, § 7.

was originally enacted by Acts 1959, No.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-63-1708. No transaction of an insurance business.**

(a) A protected cell company insurance securitization shall not be deemed to be an insurance or reinsurance contract.



(b) An investor in a protected cell company insurance securitization shall not be deemed, by sole means of this investment, to be transacting insurance business in this state.

(c) The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a protected cell company insurance securitization shall not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection with the protected cell company insurance securitization.

**History.** Acts 2001, No. 1428, § 8.

### **23-63-1709. Authority to adopt regulations.**

The Insurance Commissioner may promulgate regulations necessary to carry out the purpose and intent of this subchapter.

**History.** Acts 2001, No. 1428, § 9.

## **SUBCHAPTER 18 — AUDITS OF MEDICAL PROVIDERS**

### **SECTION.**

23-63-1801. Definitions.  
23-63-1802. Time for recoupment.  
23-63-1803. Persons not covered.  
23-63-1804. Recoupments — Required disclosures.

### **SECTION.**

23-63-1805. Penalties.  
23-63-1806. Rules and regulations.  
23-63-1807. No waiver of provisions.

### **23-63-1801. Definitions.**

As used in this subchapter:

(1) “Covered person” means a person on whose behalf a health care insurer offering health insurance coverage is obligated to pay benefits or provide services;

(2) “Health care insurer” means an entity subject to the insurance laws of this state or the jurisdiction of the Insurance Commissioner that contracts or offers to contract to provide health insurance coverage, including, but not limited to, an insurance company, a health maintenance organization, or a hospital medical service corporation;

(3) “Health care provider” means any person or entity providing:

(A) Medical, pharmaceutical, optometric, or dental care;

(B) Hospitalization; or

(C) Any other services and goods used for the purpose or incidental to the purpose of preventing, alleviating, curing, or healing human illness or injury;

(4)(A) “Health insurance coverage” means benefits consisting of medical, pharmaceutical, optometric, or dental care, hospitalization, or other goods or services for the purpose of preventing, alleviating, curing, or healing human illness provided, directly or indirectly, through insurance, reimbursement, or otherwise, including items

and services paid for under any policy, certificate, or agreement offered by a health care insurer.

(B) “Health insurance coverage” does not include policies or certificates covering only accident, credit, disability income, long-term care, hospital indemnity, Medicare supplemental policy as defined in 42 U.S.C. § 1395ss(g)(1), a specified disease, other limited benefit health insurance, automobile medical payment insurance, or claims under the Workers’ Compensation Law, § 11-9-101 et seq., Public Employee Workers’ Compensation Act, § 21-5-601 et seq., or the Comprehensive Health Insurance Pool Act, § 23-79-501 et seq.; and

(5) “Recoupment” means any action or attempt by a health care insurer to recover or collect payments already made to a health care provider with respect to a claim:

(A) By reducing other payments currently owed to the health care provider;

(B) By withholding or setting off the amount against current or future payments to the health care provider;

(C) By demanding payment back from a health care provider for a claim already paid; or

(D) By any other manner that reduces or affects the future claim payments to the health care provider.

**History.** Acts 2005, No. 422, § 1.

### **23-63-1802. Time for recoupment.**

(a) Except in cases of fraud committed by the health care provider, a health care insurer may exercise recoupment from a provider only during the eighteen-month period after the date that the health care insurer paid the claim submitted by the health care provider.

(b)(1) A health care insurer that exercises recoupment under this section shall give the health care provider a written or electronic statement specifying the basis for the recoupment.

(2) At a minimum, the statement shall contain the information required by § 23-63-1804.

**History.** Acts 2005, No. 422, § 1.

### **23-63-1803. Persons not covered.**

(a) If a health care insurer determines that payment was made for services not covered under the covered person’s health insurance coverage, the health care insurer shall give written notice to the health care provider of its intent to exercise recoupment and may:

(1) Request a refund from the health care provider; or

(2) Make a recoupment of the payment from the health care provider in accordance with § 23-63-1804.

(b)(1) Except in the case of fraud committed by the health care provider or as provided in subdivision (b)(2) of this section, subsection (a) of this section shall not apply if a health care provider or other party

on its behalf verified from the health care insurer or its agent that an individual was a covered person and if the health care provider in good faith provided services to the individual in reliance on the verification.

(2) A health care insurer has one hundred twenty (120) days from the date of payment to notify the provider of a verification error and the fact that services rendered will not be covered if the error was made in good faith at the time of the verification.

**History.** Acts 2005, No. 422, § 1.

#### **23-63-1804. Recoupments — Required disclosures.**

If a health care insurer exercises recoupment, then the health care insurer shall provide the health care provider written documentation that specifies the:

- (1) Amount of the recoupment;
- (2) Covered person's name to whom the recoupment applies;
- (3) Patient identification number;
- (4) Date or dates of service;
- (5) Service or services on which the recoupment is based;
- (6) Pending claims being recouped or future claims that will be recouped; and
- (7) Specific reason for the recoupment.

**History.** Acts 2005, No. 422, § 1.

#### **23-63-1805. Penalties.**

The failure to comply with any provision of this subchapter shall be deemed an unfair trade practice under the Trade Practices Act, § 23-66-201 et seq., and may be punished by the fines and penalties established under §§ 23-60-108, 23-66-210, and 23-66-215.

**History.** Acts 2005, No. 422, § 1.

#### **23-63-1806. Rules and regulations.**

The Insurance Commissioner shall adopt rules and regulations by January 1, 2006, to ensure compliance with this subchapter.

**History.** Acts 2005, No. 422, § 1.

#### **23-63-1807. No waiver of provisions.**

The provisions of this subchapter shall not be waived, voided, or nullified by contract.

**History.** Acts 2005, No. 422, § 1.



SUBCHAPTER 19 — PROPERTY AND CASUALTY ACTUARIAL OPINION LAW

SECTION.	SECTION.
23-63-1901. Title.	supporting documentation required.
23-63-1902. Definitions.	
23-63-1903. Annual statement of actuarial opinion, actuarial opinion summary, and	23-63-1904. Liability of appointed actuary.
	23-63-1905. Confidentiality.

**Effective Dates.** Acts 2009, No. 726,  
§ 24: January 1, 2010, by its own terms.

**23-63-1901. Title.**

This subchapter shall be known and may be cited as the “Property and Casualty Actuarial Opinion Law”.

**History.** Acts 2009, No. 726, § 24.

**23-63-1902. Definitions.**

As used in this subchapter:

- (1) “Actuarial opinion summary” means a summary of the information supporting a statement of actuarial opinion;
- (2) “Appointed actuary” means the actuary appointed by a property and casualty insurance company to prepare a statement of actuarial opinion and an actuarial opinion summary; and
- (3) “Statement of actuarial opinion” means the actuarial opinion of an appointed actuary prepared in accordance with the appropriate National Association of Insurance Commissioners’ Property and Casualty Annual Statement Instructions.

**History.** Acts 2009, No. 726, § 24.

**23-63-1903. Annual statement of actuarial opinion, actuarial opinion summary, and supporting documentation required.**

- (a)(1) Unless exempted by the Insurance Commissioner, a property and casualty insurance company doing business in this state shall annually file with the commissioner a statement of actuarial opinion and an actuarial opinion summary.
- (2) A property and casualty insurance company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(b)(1) An actuarial report and underlying work papers as required by the appropriate National Association of Insurance Commissioners’

Property and Casualty Annual Statement Instructions shall be prepared to support each statement of actuarial opinion.

(2) If a property and casualty insurance company fails to provide a supporting actuarial report or underlying work papers at the request of the commissioner or the commissioner determines that the supporting actuarial report or work papers provided by the insurance company are not acceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the property and casualty insurance company to:

(A) Review the statement of actuarial opinion and the basis for the statement of actuarial opinion; and

(B) Prepare the supporting actuarial report or work papers.

**History.** Acts 2009, No. 726, § 24.

### **23-63-1904. Liability of appointed actuary.**

An appointed actuary is not liable for damages to any person other than the property and casualty insurance company or the Insurance Commissioner, or both the property and casualty insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's statement of actuarial opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

**History.** Acts 2009, No. 726, § 24.

### **23-63-1905. Confidentiality.**

(a) The statement of actuarial opinion shall be filed with the annual statement required by § 23-63-216 and treated as a public record under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b)(1) Documents, materials, or other information in the possession or control of the State Insurance Department that are considered an actuarial report, work papers, or an actuarial opinion summary provided in support of the statement of actuarial opinion, and any other material provided by the property and casualty insurance company to the Insurance Commissioner in connection with the actuarial report, work papers, or actuarial opinion summary are:

(A) Confidential by law;

(B) Privileged;

(C) Conclusively presumed to be records that would give advantage to competitors under § 25-19-105(b)(9)(A);

(D) Not subject to subpoena; and

(E) Not discoverable or admissible as evidence in a private civil action.

(2) This subsection does not limit the commissioner's authority to:

(A) Release the documents, materials, or other information to the Actuarial Board for Counseling and Discipline if:

(i) The documents, materials, or other information is required for professional disciplinary proceedings; and

(ii) The board establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents, materials, or other information; or

(B) Use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(c) The commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner shall not testify in a private civil action concerning any confidential documents, materials, or information described in subsection (b) of this section.

(d) To assist the performance of the commissioner's duties, the commissioner may:

(1) Share with the following entities the documents, materials, or other information described in subsection (b) of this section if the respective entity agrees to maintain the confidentiality and privileged status of documents, materials, or other information and has the legal authority to maintain confidentiality:

(A) Other state, federal, and international regulatory agencies;

(B) The National Association of Insurance Commissioners and its affiliates and subsidiaries; and

(C) State, federal, and international law enforcement authorities;

(2)(A) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from:

(i) The National Association of Insurance Commissioners and its affiliates and subsidiaries; and

(ii) Regulatory and law enforcement officials of other foreign or domestic jurisdictions.

(B) The commissioner shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) Enter into agreements governing the sharing and use of information consistent with this subsection and subsections (b) and (c) of this section.

(e) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information described in subsection (b) of this section shall not occur as a result of disclosure to the commissioner under this section or as a result of sharing a document, material, or other information under subsection (d) of this section.



## CHAPTER 64

LICENSEES, AGENTS, BROKERS, ADJUSTERS, AND  
CONSULTANTS

## SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSING AND APPOINTMENT.
3. CONTINUING EDUCATION.
4. MANAGING GENERAL AGENTS ACT.
5. PRODUCER LICENSING MODEL ACT.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1 and 2 may not apply to § 23-64-230 and subchapter 3, which were enacted subsequently.

**Effective Dates.** Acts 1997, No. 1004, § 5: July 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the changes made in this act should become effective at the beginning

of the next fiscal year; that unless the changes become effective at the beginning of the next fiscal year a substantial and unnecessary burden will be placed upon the insurance department; and therefore an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public health, peace, and safety shall be in full force and effect from and after July 1, 1997.”

## RESEARCH REFERENCES

**ALR.** Termination of agency contract as wrongful, so as to make insurer liable to agent. 5 A.L.R.4th 1080.

Revocation or suspension of insurance agent’s license for withholding or misappropriation of premiums. 17 A.L.R.4th 1106.

Unauthorized practice of law: activities of insurance adjusters as. 29 A.L.R.4th 1156.

Provisions of insurance company’s contract with independent insurance agent restricting competitive placements by agent as illegal restraint of trade under state law. 42 A.L.R.4th 1072.

Liability of insurance agent or broker to insured for misrepresentation of cash surrender value or accumulated value benefits of life insurance policy. 44 A.L.R.4th 1030.

Professional liability insurance for insurance agents and brokers. 55 A.L.R.5th 681.

Liability of insurance agent or broker for failure to procure adequate liability insurance coverage. 60 A.L.R.5th 165.

**Am. Jur.** 43 Am. Jur. 2d, Ins., § 108 et seq.

**C.J.S.** 44 C.J.S., Ins., § 178 et seq.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 23-64-101. Scope of provisions.  
23-64-102. Definitions.

## SECTION.

- 23-64-103. Exceptions to definitions.

**Effective Dates.** Acts 1987, No. 622, § 23: Apr. 4, 1987. Emergency clause provided: “It is hereby found and determined

by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are

inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 657, § 14: Mar. 16, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the present laws to license insurance representatives, laws on office facilities of non-resident adjusters, and laws to license surplus lines brokers, are possibly too costly, burdensome, or time-consuming; and need immediate attention to alleviate the burdens on commerce of the insurance business in Arkansas. This Act is designed to relieve those hardships and to ease the financial burdens for individuals doing insurance business in Arkansas; that in turn is designed to provide more efficient insurance services to the insurance buying public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 580, § 29, provided: "Effective date. The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds

that implementation of the act is not possible by July 1, 2002."

Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline in regard to the Arkansas Insurance Department's regulation of agents, brokers, surplus line brokers, and other applicants for individual and corporate licenses; and that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come into compliance by the November 12, 2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 684, § 10: January 1, 2008.

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### 23-64-101. Scope of provisions.

This chapter shall apply with respect to any insurer, as to all insurances other than wet marine and foreign trade insurance.

**History.** Acts 1959, No. 148, § 144; A.S.A. 1947, § 66-2801; Acts 1997, No. 1004, § 1; 2007, No. 684, § 3.

**23-64-102. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1)(A) An “agent” is an individual, firm, limited liability company, or corporation who is required by the Producer Licensing Model Act, § 23-64-501 et seq., to be licensed as an insurance producer by the Insurance Commissioner.

(B) An agent shall be deemed to be the agent of the appointing insurer;

(2)(A)(i) A “resident agent” is an agent whose residence is in or who may vote in this state or who is licensed as a resident insurance producer by the commissioner in accordance with the Producer Licensing Model Act, § 23-64-501 et seq.,

(ii) Every reference herein to “an agent, a resident of this state” and to “a licensed agent, a resident of this state” shall include any duly licensed resident agent as defined in this section.

(B) By reciprocal arrangements with another state under which residents of Arkansas may be licensed and operate as resident agents of the other state, the commissioner may license, as resident agents of Arkansas, residents of the other state who:

(i) In cities or towns through which passes the Arkansas boundary, or border communities or border trade areas, maintain their principal place of business in that city, town, community, or trade area; and

(ii) Are otherwise qualified for the license.

(C) The terms “border communities” or “border trade areas” shall mean communities and trade areas situated within five (5) miles of the Arkansas boundary.

(D) Firms and corporations of which all the members and persons exercising the license power qualify individually as to residence under the definition in this subdivision (2) may be licensed as resident agents;

(3) A “broker” is an individual, firm, limited liability company, or corporation who is required to be licensed as an insurance producer under the Producer Licensing Model Act, § 23-64-501 et seq., who represents insureds or prospective insureds other than himself or herself or itself and not on behalf of an insurer or agent. A broker shall be deemed to be the agent of the insured;

(4)(A) An “adjuster” is an individual, firm, limited liability company, or corporation who for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates, on behalf of the insurer, settlement of claims arising under insurance contracts.

(B) A licensed attorney at law who is qualified to practice law in this state is not deemed to be an “adjuster” for the purposes of this chapter.

(C) A salaried employee of an insurer or of a managing general agent or of any adjustment bureau or association owned and maintained by insurers to adjust losses of member insurers is not deemed to be an “adjuster” for the purposes of this chapter.



(D) A resident agent or marine average adjuster or an agent or broker who adjusts or assists in adjustment of losses arising under policies procured through the broker or issued by the insurer represented by the agent that is appointed by the insurer shall not be deemed to be an "adjuster" for the purposes of this chapter.

(E)(i) The commissioner may issue "limited adjusters' licenses" to persons who are sponsored and are employees of self-insured, self-funded, entities for purposes of the adjustment of claims for or on the behalf of that self-insured sponsoring entity.

(ii) The limited license shall be valid only while the employee is employed by the sponsoring self-insured entity.

(iii) Qualifications, fees, and other aspects of licensure for "limited adjusters' licenses" shall be as established by regulation;

(5)(A) An "insurance consultant" is an individual, firm, limited liability company, or corporation which, for a fee, in any manner advises or counsels anyone as to his or her insurance needs and coverages under any insurance policy or contract.

(B) The term "insurance consultant" shall not be deemed to include licensed attorneys, actuaries, certified public accountants, medical bill analysts, or any other person who gives or offers incidental advice to the public in the normal course of a business or professional activity other than insurance consulting; and

(6) For purposes of the commissioner's reciprocal arrangements or agreements with the insurance supervisory officials of other states for licensure of nonresident insurance applicants as permitted in § 23-64-203 or other applicable laws, the term "insurance producer" means "agent" or "broker", or both, as applicable, as defined in this section.

**History.** Acts 1959, No. 148, §§ 145-149, 151; A.S.A. 1947, §§ 66-2802 — 66-2806, 66-2808; Acts 1987, No. 622, § 1; 1987, No. 927, § 1; 1987, No. 955, § 1; 1997, No. 1004, § 1; 1999, No. 657, § 1; 2001, No. 580, § 3.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Insurance, 5 U. Ark. Little Rock L.J. 153.

Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

## CASE NOTES

### Solicitors.

A provision in a life policy that notice or knowledge of the soliciting agent or medical examiner is not notice to or knowledge of the insurer and that neither of them is authorized to accept risks or pass upon insurability did not contravene former provision similar to subdivision (5). *Self v. New York Life Ins. Co.*, 56 F.2d 364 (8th Cir. 1932), cert. denied, *Self v. New York L. Ins. Co.*, 287 U.S. 607, 53 S. Ct. 11 (1932) (decision under prior law).

Former provision similar to subdivision (5) had no effect upon the agent's powers to bind his principal and did not change the general law of agency. *Fireman's Fund Ins. Co. v. Leftwich*, 192 Ark. 159, 90 S.W.2d 497 (1936) (decision under prior law).

Agent held to be soliciting agent of insurer. *Coal Operators Cas. Co. v. F.S. Neely Co.*, 219 Ark. 579, 243 S.W.2d 744 (1951); *Aetna Ins. Co. v. Eisenberg*, 294

F.2d 301 (8th Cir. 1961) (preceding decisions under prior law).

**23-64-103. Exceptions to definitions.**

The definitions contained in § 23-64-102 shall not be deemed to include the attorney-in-fact of a reciprocal insurer.

**History.** Acts 1959, No. 148, § 150; 1004, § 1; 1999, No. 657, § 2; 2001, No. A.S.A. 1947, § 66-2807; Acts 1997, No. 580, § 4.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

**SUBCHAPTER 2 — LICENSING AND APPOINTMENT**

SECTION.

- 23-64-201. License required to solicit, sell, negotiate, engage, consult, or adjust insurance — Grounds for license suspension.
- 23-64-202. General qualifications for licensure — Exemptions.
- 23-64-203. Testing, emergency suspension, and records.
- 23-64-204. Application for an insurance consultant's license.
- 23-64-205. Written examination.
- 23-64-206. [Repealed.]
- 23-64-207. Scope of broker's license and authority and insurance consultant's license.
- 23-64-208. [Repealed.]
- 23-64-209. Qualifications for adjuster's license.
- 23-64-210. Licensing of adjuster and insurance consulting partnerships, limited partnerships, joint ventures, limited liability companies, and corporations.
- 23-64-211 — 23-64-213. [Repealed.]
- 23-64-214. Issuance of license — Form and content of license.

SECTION.

- 23-64-215. Continuance of license.
- 23-64-216. Suspension or revocation.
- 23-64-217. Procedure following suspension or revocation.
- 23-64-218. Return of license to Insurance Commissioner.
- 23-64-219. Appointment of agent — Continuation or termination of appointment.
- 23-64-220. Place of business — Maintenance of records.
- 23-64-221. Vending machines.
- 23-64-222. [Repealed.]
- 23-64-223. Fiduciary duties of licensees.
- 23-64-224. Combination agent and broker license.
- 23-64-225. Excess or rejected business.
- 23-64-226. Termination rights of agents.
- 23-64-227. Appointment of Insurance Commissioner as agent for service of process.
- 23-64-228, 23-64-229. [Transferred.]
- 23-64-230. Renewal of policies after agent's termination.
- 23-64-231. Settlement with terminated producers required.
- 23-64-232. Premium delinquencies — Definitions.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 23-64-210 and 23-64-216 may not apply to § 23-64-230, which was enacted subsequently.

**Preambles.** Acts 1983, No. 534 contained a preamble which read: "Whereas,

the laws of this State relative to the licensing of insurance agents, brokers, and solicitors require an applicant for licensing to be qualified in the kind or kinds of insurance as to which he is to be licensed, be reasonably familiar with the insurance



laws of this State, and with the provisions of the insurance policies and contracts he proposes to solicit, negotiate, or effect under the license; and

"Whereas, recent rapid developments in all areas of the insurance field have made it difficult for many applicants for insurance licenses to properly prepare themselves in licensing examinations, resulting in a large number of persons being unable to successfully complete the State insurance licensing examinations; and

"Whereas, the insurance-buying public suffers and is inconvenienced when a sufficient number of competent insurance agents, solicitors, and brokers are not available for sales, servicing, and counseling; and

"Whereas, the State has heretofore provided little or no preclicensing educational guidance, services, or facilities to aid applicants in the study and preparation for such examinations; and

"Whereas, it is deemed useful and in the best interest of the insurance-buying public and applicants for insurance licensing to make provision for preclicensing examination educational aids;

"Now, therefore...."

**Effective Dates.** Acts 1973, No. 66, § 12: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 547, § 4: Mar. 25, 1975. Emergency clause provided: "It has been found and determined by the General Assembly that the various lending institution agencies are imposing on the credit consumer and that an immediate correction thereof is essential and that only by the immediate passage of this Act may adequate protection be provided. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full

force and effect from and after its passage and approval."

Acts 1983, No. 433, § 2: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is unnecessary, because of the limited nature of the insurance involved and lack of technical knowledge required, that applicants for licenses to sell credit property insurance be required to sit for an examination; and to require an examination for licensees to sell credit property insurance to debtors of the applicant or his employer is burdensome and inconvenient to the public and vendors of furniture and other personal property. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 534, § 7: Mar. 18, 1983. Emergency clause provided: "Whereas, it is in the best interest of the insurance-buying public that there be a sufficient number of competent insurance agents, solicitors, and brokers available for sales, servicing, and counseling for their insurance needs and there is deemed a need to provide applicants for licensing as insurance agents, solicitors, and brokers with preclicensing examination educational guidance, facilities, and services to aid them in studying and preparing for license examinations, an emergency is hereby declared to exist and this Act, being necessary for the immediate protection of the public peace, health, and safety, shall take effect immediately upon its passage and approval."

Acts 1985, No. 484, § 4: Mar. 21, 1985. Emergency clause provided: "It is hereby found and determined by the General As-



sembly that agency names should be approved by the Commissioner; that such is not now provided by law and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 622, § 23: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to

provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 477, § 5: Mar. 13, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present law on the licensing of nonresident insurance agents and brokers has resulted in economic harm to Arkansas insurance agents and brokers licensed in other states, in that other states have taken retaliatory action in the form of revocation of Arkansas insurance agent's and broker's licenses in such states because of the restrictions current Arkansas law places on activities of nonresident agents and brokers in Arkansas; that there is an urgent need for the revision of the law pertaining to licensing of nonresident insurance agents and brokers; and that this Act is immediately necessary to eliminate deficiencies found in the present law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act."

Acts 1993, No. 523, § 5: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that current laws relating to lending institutions engaged in the insurance business are in urgent need of clarification, and that this act is designed to clarify such laws and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this

act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 652, § 18: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that current revenues supporting the operation and activities of the Arkansas Insurance Department are insufficient for efficient and productive operation of the Insurance Department in view of its myriad duties to protect the insurance-buying consumers of this State and to regulate the Arkansas activities of insurers, insurance agents and similar licensees, and professional bail bond companies. The provisions of this Act are essential to the operations of the Arkansas Insurance Department and delay in the effective date of this Act could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 592, § 5: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that, as the result of the recent United States Supreme Court decision in the case *Nations Bank v. Variable Annuity Life Ins., Co.*, Arkansas insurance laws prohibiting the sale of annuity products by lending institutions and their subsidiaries and affiliates are in urgent need of modification and clarification in order that Arkansas lending institutions will

not suffer a competitive disadvantage to foreign lending institutions, and that this act is designed to modify and clarify such laws in order to accomplish such purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 908, § 5: March 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the termination of agent contracts by insurance companies and relating to the protection of insureds covered by policies of insurance issued by the company through the particular agent whose contract is to be terminated are inadequate to protect the insureds and the agents and that fairness and equity demand that the laws on this matter be adequate to protect both agents and insureds from unnecessary hardships which may otherwise occur as a result of such termination and that this act is designed to provide such protection and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval



by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 657, § 14: Mar. 16, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the present laws to license insurance representatives, laws on office facilities of non-resident adjusters, and laws to license surplus lines brokers, are possibly too costly, burdensome, or time-consuming; and need immediate attention to alleviate the burdens on commerce of the insurance business in Arkansas. This Act is designed to relieve those hardships and to ease the financial burdens for individuals doing insurance business in Arkansas; that in turn is designed to provide more efficient insurance services to the insurance buying public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 580, § 29, provided: "Effective date. The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds

that implementation of the act is not possible by July 1, 2002."

Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline in regard to the Arkansas Insurance Department's regulation of agents, brokers, surplus line brokers, and other applicants for individual and corporate licenses; and that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come into compliance by the November 12, 2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

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### **23-64-201. License required to solicit, sell, negotiate, engage, consult, or adjust insurance — Grounds for license suspension.**

(a) No insurance producer, insurer, insurance consultant, or adjuster shall permit any person not properly licensed under this chapter to solicit, sell, negotiate, engage, consult, or adjust in the business of insurance on behalf of the insurance producer, insurer, insurance consultant, or adjuster.



(b)(1) Unless he or she has complied with the Producer Licensing Model Act, § 23-64-501 et seq., a person shall not consult, counsel, or advise others on matters of insurance needs or coverages under any insurance policy or contract of insurance unless licensed under this section.

(2) Licensure of a salaried employee of the entity or entities for which he or she may consult or counsel on matters of insurance to that entity or entities shall not be required.

(c) No person may adjust claims as an adjuster without licensure under this chapter.

(d) Any license issued by the Insurance Commissioner, under this section, may be immediately suspended as per § 9-14-239 for failure to pay child support.

(e) All licensees or applicants for licensure under this section must notify the commissioner in writing within thirty (30) days of any filing of a criminal charge or conviction or plea of a criminal charge or the filing of any bankruptcy proceeding by or against them. Failure to so notify the commissioner may result in the immediate suspension of the license.

**History.** Acts 1959, No. 148, § 152; 1985, No. 804, § 21; A.S.A. 1947, § 66-2809; Acts 1987, No. 927, § 1; 1989, No. 772, § 5; 1993, No. 901, § 13; 1997, No. 1004, § 1; 2001, No. 580, § 5; 2007, No. 331, § 1.

**Publisher's Notes.** Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

This section was formerly codified as § 23-64-202. Former § 23-64-201, concerning creation of the Insurance Advisory Examining Board, was repealed by Acts 1997, No. 1004, § 1. The section was derived from Acts 1983, No. 534, § 3; A.S.A. 1947, § 66-2811.1; 1997, No. 250, § 222. The repeal of this section by Acts 1997, No. 1004 superseded its amendment by Acts 1997, No. 250. See § 1-2-207.

**Amendments.** The 2007 amendment rewrote (a).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Contracts.  
Violation.

### Constitutionality.

Statutes requiring license to be an insurance agent are constitutional. *Dunn v. Phoenix Village, Inc.*, 213 F. Supp. 936 (W.D. Ark. 1963).

**Contracts.**

Any contract entered into by an unlicensed agent is void and unenforceable even though this section does not expressly declared such contracts to be void. *Dunn v. Phoenix Village, Inc.*, 213 F. Supp. 936 (W.D. Ark. 1963).

**Violation.**

Where a trial court instructed the jury in an insurance tort case that a violation

of the state insurance licensing statute, § 23-64-201, was evidence of deceit, the instruction was given in error because violation of that statute was not necessarily the equivalent of an intention to misrepresent, which was necessary for the tort of deceit; such error was presumptively prejudicial, requiring reversal of the judgment against the insurer's agent. *Cincinnati Life Ins. v. Mickles*, 85 Ark. App. 188, 148 S.W.3d 768 (2004).

**23-64-202. General qualifications for licensure — Exemptions.**

(a) For the protection of the people of this state, the Insurance Commissioner shall not, at or before completion of application processing, issue, continue, or permit to exist any license as to insurance unless the licensee is in compliance with this chapter and other applicable laws of this state, and as to any individual who does not also meet the following qualifications:

(1) To obtain a license as an agent or broker, he or she shall have complied with the Producer Licensing Model Act, § 23-64-501 et seq., and subsection (b) of this section; and

(2) To obtain a license as an adjuster or insurance consultant, he or she must be:

(A) Of legal age of majority or must have had disabilities of minority removed for all general purposes and provide evidence of same;

(B)(i) A resident of this state or of a city or town through which passes the boundary of this state, qualified as to residence under § 23-64-102(2)(B) and must have been a resident for not less than the thirty (30) days immediately prior to the date of application for the license.

(ii) However, upon written request by the applicant, the commissioner in his or her discretion may waive the thirty-day residence requirement as to any applicant for license who is a bona fide resident of this state and who furnishes proof satisfactory to the commissioner that he or she is and intends to be a permanent resident of Arkansas; and

(C)(i) Deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation, and these qualifications must continue in order to remain licensed.

(ii) On a case-by-case basis, the commissioner may require documentation to verify qualifications for licensure under this section.

(b) All applicants for a license as an agent, broker, adjuster, or insurance consultant shall:

(1) Pass a written examination for the license if required under this chapter and attest that he or she is familiar with the insurance laws of this state and will keep himself or herself familiar despite changes in the law; and

(2)(A)(i) Before licensure or examination, if examination is required, complete specific courses of instruction in the field of insurance as the commissioner shall by regulation prescribe for the license.

(ii) Proof of completion must be presented before testing is administered.

(iii)(a) The courses of instruction shall consist, in the aggregate, of not less than twenty (20) hours of classroom instruction or electronic instruction per line of insurance authority. However, an applicant shall not be required to repeat the hours of instruction on Arkansas laws and rules within two (2) years of taking those hours for a previous line of authority.

(b) All instruction shall be administered by or under the supervision of persons qualifying with and approved by the commissioner for that purpose.

(c) An instructor deemed qualified and approved by the commissioner shall monitor attendance and participation and shall sign a certificate evidencing the licensee's completion of the hours.

(d) Applicants for adjuster and consultant licenses are exempt from prelicensing education, as are nonresident applicants for producer licenses from states that engage in reciprocal licensing with Arkansas.

(iv) Successful completion of the courses of instruction shall be certified to the commissioner, on forms prescribed by him or her, by the person under whose supervision the instruction was administered.

(v) The courses of instruction shall provide the applicant with basic knowledge of the broad principles of insurance, licensing, and regulatory laws of this state, and the obligations and duties of an agent, broker, or consultant.

(vi) Programs of instruction may be provided by any authorized insurer, agents' association, or trade association recognized by the commissioner or by any university, college, or any other institution in this state having a comprehensive course of instruction approved and certified by the commissioner.

(vii) The commissioner shall issue appropriate regulations to implement the educational requirements and standards prescribed in this subdivision (b)(2) and to prescribe the general curriculum of courses of instruction.

(viii) The curriculum shall include not less than five (5) hours of instruction relative to the licensing of agents and insurance regulatory laws of this state, criteria for approval of the providers of the courses of instruction, and certifications contemplated hereunder.

(B) None of the provisions of this subsection shall apply to and no examination or educational requirements contained in this subsection shall be required of any applicant for a license presently exempted by law from an examination.

(C) The provisions of subdivision (b)(2)(A) of this section shall not apply to persons making application for license as an agent or broker



for crop hail insurance, mobile home physical damage insurance, mortgagor's decreasing term life and disability insurance, prepaid legal insurance, and fire and marine insurance written in connection with credit transactions, or any line exempted by law, for which only a limited license is issued, nor any other insurance for which only a limited license may be issued and the commissioner, by order or regulation, exempts from the educational requirements of subdivision (b)(2)(A) of this section.

(c) No written examination shall be required for:

(1) Any applicant for a license as a limited line credit insurance producer as defined in § 23-64-502;

(2) Automobile dealers or automobile finance companies or their employees applying for licenses covering auto physical damage or the vendor's single interest on motor vehicles only;

(3) Transportation ticket agents of common carriers applying for licenses to solicit and sell only accident insurance ticket policies or insurance of personal effects while being carried as baggage on the common carrier, as incidental to their duties as transportation ticket agents;

(4) Applicants for licenses as nonresident agents or nonresident brokers, but subject to reciprocal arrangements as provided for in this chapter;

(5) Any applicant for a temporary license under this chapter;

(6) Applicants for licenses to sell credit property insurance;

(7)(A) Applicants for licenses to sell funeral expense insurance exclusively.

(B) "Funeral expense insurance" shall be defined in rules adopted by the commissioner;

(8) Applicants for licenses to sell mortgagor's decreasing term life insurance or mortgagor's decreasing term disability insurance to debtors of the applicants or of their employers; or

(9) Applicants for licenses to sell for farmers' mutual aid associations.

(d)(1) The commissioner may issue to a rental company that has complied with the requirements of this subsection a limited license authorizing the limited licensee to offer or sell insurance in connection with the rental of vehicles.

(2) As used in this subsection:

(A) "Limited license" means the authority of a person or entity authorized to sell certain coverages relating to the rental of vehicles pursuant to the provisions of this subsection;

(B) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease;

(C) "Rental company" means any person or entity in the business of providing primarily private passenger vehicles to the public under a rental agreement for a period not to exceed ninety (90) days;

(D) "Rental period" means the term of the rental agreement;

(E) "Renter" means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety (90) days; and

(F) "Vehicle" or "rental vehicle" means a motor vehicle of the private passenger type, including passenger vans, minivans, and sport utility vehicles and of the cargo type, including cargo vans, pickup trucks, and trucks with a gross vehicle weight of less than twenty-six thousand pounds (26,000 lbs.) and that do not require the operator to possess a commercial driver's license.

(3) As a prerequisite for issuance of a limited license under this subsection, there shall be filed with the commissioner a written application for a limited license signed by an officer of the applicant, in such form or forms and supplements thereto, and containing such information as the commissioner may prescribe.

(4) In the event that any provision of this subsection is violated by a limited licensee, the commissioner may:

(A) After notice and hearing, revoke or suspend a limited license issued under this subsection in accordance with the provisions of law; or

(B) After notice and hearing, impose other penalties, including suspending the transaction of insurance at specific rental locations where violations of this subsection have occurred, as the commissioner deems to be necessary or convenient to carry out the purposes of this subsection.

(5) The rental company licensed pursuant to this subsection may offer or sell insurance underwritten by a licensed insurer or authorized surplus lines carrier only in connection with and incidental to the rental of vehicles, whether at the rental office or by preselection coverage in a master, corporate, group rental, or individual agreement in any of the following general categories:

(A) Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period;

(B) Liability insurance that at the exclusive option of the rental company may include uninsured and underinsured motorist coverage whether offered separately or in combination with other liability insurance that provides coverage, as applicable, to renters and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle;

(C) Personal effects insurance that provides coverage, as applicable, to renters and other vehicle occupants for the loss of or damage to personal effects that occurs during the rental period;

(D) Roadside assistance and emergency sickness protection programs; and

(E) Any other travel or auto-related coverage that a rental company offers in connection with and incidental to the rental of vehicles.

(6) No insurance may be issued by a limited licensee pursuant to this subsection unless:

(A) The rental period of the rental agreement does not exceed ninety (90) consecutive days;

(B) At every rental location where rental agreements are executed, brochures or other written materials are readily available to the prospective renter that:

(i) Summarize clearly and correctly the material terms of coverage offered to renters, including the identity of the insurer;

(ii) Disclose that the coverage offered by the rental company may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage;

(iii) State that the purchase by the renter of the kinds of coverage specified in this subsection is not required in order to rent a vehicle; and

(iv) Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim; and

(C) Evidence of coverage is disclosed within the rental agreement provided to every renter who elects to purchase such coverage.

(7) Any limited license issued under this subsection shall also authorize any employee of the limited licensee to act individually on behalf of and under the supervision of the limited licensee with respect to the kinds of coverage specified in this subsection.

(8) Each rental company licensed pursuant to this subsection shall conduct a training program in which employees being trained shall receive basic instruction about the kinds of coverage specified in this subsection and offered for purchase by prospective renters of rental vehicles.

(9) Notwithstanding any other provision of this subsection or any rule adopted by the commissioner, a limited licensee pursuant to this subsection shall not be required to treat moneys collected from renters purchasing such insurance when renting vehicles as funds received in a fiduciary capacity, provided that the charges for coverages shall be itemized and be ancillary to a rental transaction. The sale of insurance not in conjunction with a rental transaction shall not be permitted.

(10) No limited licensee under this subsection shall advertise, represent, or otherwise hold itself or any of its employees out as licensed insurers, insurance agents, or insurance brokers.

**History.** Acts 1959, No. 148, § 153; 1975, No. 547, § 1; 1983, No. 522, §§ 10, 11; 1983, No. 534, §§ 1, 4, 5; A.S.A. 1947, §§ 66-2810, 66-2811.2, 66-2811.3; Acts 1987, No. 927, § 2; 1993, No. 523, § 1; 1993, No. 901, §§ 14-16; 1995, No. 592, § 1; 1997, No. 1004, § 1; 2001, No. 580, § 6; 2003, No. 1203, § 2; 2005, No. 1948, § 1.

**A.C.R.C. Notes.** Acts 2007, No. 684,

§ 11, provided: "License transition. Every person who holds a license granted under § 23-103-101 — § 23-103-316 and who meets the definition of a title insurance agent under § 23-103-402 shall be exempt from examination under § 23-64-202(a)(1) upon the payment of the renewal license fee and shall be issued a title insurance agent license if that person applies for a license on or before December



31, 2007.”

**Publisher's Notes.** Acts 1983, No. 522, § 51, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

Acts 1983, No. 534, § 6, provided that

the provisions of subdivision (a)(9) of this section should be implemented and effective as to all applicants for licenses as insurance agents, brokers and solicitors under the act beginning January 1, 1984.

This section was formerly codified as § 23-64-203. Former § 23-64-202 has been renumbered as § 23-64-201.

## CASE NOTES

### ANALYSIS

Construction.

Continuation of Licenses.

Nonresidents.

### Construction.

The language of subsection (b) of this section is clear and unambiguous. *Arkansas Bank & Trust Co. v. Douglass*, 318 Ark. 457, 885 S.W.2d 863 (1994).

While the language in subdivision (b)(1) is the only place in this section where “the holder of the control of a lending institution” is mentioned, it is correct to conclude that holding companies merely holding controlling stock in another lending institution are contemplated as being included within the meaning of this section. *Arkansas Bank & Trust Co. v. Douglass*, 318 Ark. 457, 885 S.W.2d 863 (1994).

Subsection (c) was unavailable to a chartered bank since it held no license prior to January 1, 1960, and no license was available to any corporate agency at that time; the renewal of licenses under the subsection was discretionary and not binding on commissioner; and the subsection must be resolved within the interpre-

tation of subsections (a) and (b) which were enacted in 1975. *Arkansas Bank & Trust Co. v. Douglass*, 318 Ark. 457, 885 S.W.2d 863 (1994).

### Continuation of Licenses.

Subdivision (b)(3) of this section is a provision acknowledging grandfathered lending institutions doing insurance business, but also spells out events that could cause such an institution to lose its grandfather status. *Arkansas Bank & Trust Co. v. Douglass*, 318 Ark. 457, 885 S.W.2d 863 (1994).

When a state-chartered bank sold the grandfathered division of its business of selling of full-line insurance policies, that insurance division lost its grandfathered license when it merged with the buyer. *Arkansas Bank & Trust Co. v. Douglass*, 318 Ark. 457, 885 S.W.2d 863 (1994).

### Nonresidents.

Even though an insurance company is prohibited from authorizing a nonresident to issue policies on property in Arkansas, an agent acting in violation of such law binds his principal. *General Casualty Co. v. State*, 229 Ark. 485, 316 S.W.2d 704 (1958) (decision under prior law).

## 23-64-203. Testing, emergency suspension, and records.

(a) The Insurance Commissioner shall prescribe the form and content of all examinations required by this chapter and shall include therein questions calculated to determine the applicant's knowledge of the laws of this state and the regulations of the commissioner relative to those areas of licensure.

(b) Upon receipt of the notice from any insurance company pursuant to § 23-64-515(a), if the commissioner determines after investigation that the dismissal was for any of the reasons described in § 23-64-512, the commissioner shall immediately suspend the license of the licensee pending a hearing on the matter.

(c)(1) The commissioner shall maintain information on each licensee in this state. A complete record of all information furnished the commissioner regarding the conduct of any licensee in this state shall be maintained for a reasonable period of time as determined by the commissioner.

(2) If the commissioner receives information from any insurance company or from any other person about acts of fraud by a licensee, or about misrepresentations of the terms and provisions of any insurance policy by the licensee, the commissioner shall transmit that information plus any other information discovered in an investigation by the commissioner to the proper authorities for legal action against the agent as authorized by the laws of this state.

(d) The provisions of this subsection shall be supplemental to and shall not repeal any existing laws on the same subject.

**History.** Acts 1959, No. 148, § 154; 1967, No. 33, § 1; 1983, No. 522, § 12; 1983, No. 534, §§ 2, 4, 5; 1985, No. 307, § 1; A.S.A. 1947, §§ 66-2811, 66-2811.2, 66-2811.3, 66-2838; Acts 1987, No. 622, § 2; 1993, No. 901, §§ 17-20; 1997, No. 1004, § 1; 2001, No. 580, § 7.

**Publisher's Notes.** For cumulative effect of Acts 1983, No. 522, see Publisher's Notes to § 23-64-202.

Acts 1983, No. 534, § 6, provided that the provisions of subdivision (a)(7)(A) of this section should be implemented and effective as to all applicants for licenses as insurance agents, brokers, and solicitors under the act beginning January 1, 1984.

This section was formerly codified as § 23-64-204. Former § 23-64-203 has been renumbered as § 23-64-202.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Continuation of Licenses.  
Contracts.  
Reputation.

#### Constitutionality.

Statutes requiring license to be an insurance agent are constitutional. *Dunn v. Phoenix Village, Inc.*, 213 F. Supp. 936 (W.D. Ark. 1963).

#### Continuation of Licenses.

When a state-chartered bank sold the grandfathered division of its business of selling of full-line insurance policies, that insurance division lost its grandfathered license when it merged with the buyer.

*Arkansas Bank & Trust Co. v. Douglass*, 318 Ark. 457, 885 S.W.2d 863 (1994).

#### Contracts.

Any contract entered into by an unlicensed agent is void and unenforceable even though the statute does not expressly declare such contracts to be void. *Dunn v. Phoenix Village, Inc.*, 213 F. Supp. 936 (W.D. Ark. 1963).

#### Reputation.

Insurance salesman who was convicted of harassing communications was not issued a license, because one criterion for issuance of an agent's license is a "good personal and business reputation." *Wacaser v. Insurance Comm'r*, 321 Ark. 143, 900 S.W.2d 191 (1995).

## 23-64-204. Application for an insurance consultant's license.

(a) Application for an insurance consultant's license shall be made to the Insurance Commissioner by the applicant and be signed and sworn to by the applicant along with a nonrefundable application fee as prescribed by regulation.



(b) The form of application shall require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience in insurance, and other facts, such as, but not limited to, criminal convictions, pleas, pending charges, bankruptcies, or filings for bankruptcy or any other items, as required by the commissioner to determine whether the applicant meets the applicable qualifications mandated.

(c) The application shall state the kinds of insurance proposed to be transacted.

(d) If the applicant for license is a firm, limited liability company, or corporation, the application shall show the names of all members, managers, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license. Each individual so designated shall furnish information with respect to himself or herself, as part of the application, as though licensed as an individual licensee.

(e) The application shall also show whether the applicant or individual designee under the license was ever previously licensed to transact any kind of insurance in this state or elsewhere, whether the license was ever refused, suspended, or revoked, and whether any insurer or insurance licensee claims an applicant is indebted to it, and if so, the details thereof.

(f)(1) If the application is approved and if the nonrefundable application fee is paid, an examination permit will be issued to the applicant.

(2) The permit will be valid for a period of ninety (90) days from the date of issuance.

(3) If the applicant does not schedule and appear for examination within that ninety-day period, the permit shall expire and the applicant may be required to file a new application and shall pay another nonrefundable application fee before issuance of another examination permit to the applicant.

(4) If an applicant appears for examination but fails to pass the examination, the applicant shall be required to pay a nonrefundable reexamination fee before reexamination.

**History.** Acts 1959, No. 148, § 156; 1979, No. 942, § 21; 1983, No. 522, §§ 15-17; A.S.A. 1947, § 66-2813; Acts 1987, No. 622, § 4; 1993, No. 901, § 21; 1997, No. 1004, § 1; 1999, No. 1270, § 1; 2001, No. 580, § 8.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-64-202.

This section was formerly codified as § 23-64-205. Former § 23-64-204 has been renumbered as § 23-64-203.

### **23-64-205. Written examination.**

(a) Within a reasonable time and in a location to be determined by the Insurance Commissioner, after filing of application and payment of the applicable fees, the commissioner shall subject each applicant for license as an insurance consultant to a written examination.



(b) If the applicant is a firm, limited liability company, or corporation, the examination shall be taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(c) Examination of an applicant for an insurance consultant's license shall cover the kinds of insurance as to which the applicant is to be licensed.

(d)(1) The commissioner may give, conduct, and grade all examinations, or he or she may arrange to have examinations administered and graded by an independent testing service as specified by contract, in a fair and impartial manner, and without unfair discrimination as between individuals examined.

(2) Any written examination may be substituted by an oral examination of the applicant if so deemed necessary under any applicable statute, including, but not limited to, the Americans with Disabilities Act.

(3) The commissioner shall require a waiting period of four (4) weeks before reexamination of an applicant who thrice failed to pass previous similar examinations. This waiting period applies after every third unsuccessful attempt.

**History.** Acts 1959, No. 148, § 157; 1967, No. 33, § 2; 1979, No. 942, § 22; 1983, No. 433, § 1; 1983, No. 823, § 1; 1985, No. 307, § 1; A.S.A. 1947, §§ 66-2814, 66-2838; Acts 1987, No. 622, §§ 5, 6; 1991, No. 1123, § 21; 1993, No. 901, § 22; 1997, No. 1004, § 1; 1999, No. 657, § 3; 1999, No. 943, § 1; 2001, No. 580, § 9.

**Publisher's Notes.** This section was formerly codified as § 23-64-206. Former § 23-64-205 has been renumbered as § 23-64-204.

**U.S. Code.** The Americans with Disabilities Act, referred to in this section, is codified primarily as 42 U.S.C. § 12101 et seq.

## 23-64-206. [Repealed.]

**Publisher's Notes.** This section, concerning appointments for agents representing insurers, was repealed by Acts 2001, No. 580, § 10. The section was derived from Acts 1959, No. 148, § 159; 1983, No. 522, § 19; A.S.A. 1947, § 66-

2816; Acts 1987, No. 622, § 8; 1997, No. 1004, § 1.

This section was formerly codified as § 23-64-207. Former § 23-64-206 has been renumbered as § 23-64-205.

## 23-64-207. Scope of broker's license and authority and insurance consultant's license.

(a) The Insurance Commissioner shall not issue a broker's license limited to particular lines of insurance.

(b)(1) A broker, as such, is not an agent or other representative of an insurer and does not have power by his or her own acts to obligate the insurer upon any risk or with reference to any insurance transaction unless, and to the extent, he or she has received refunded premiums from the insurer on behalf of the insured.

(2) An insurer or agent shall have the right to pay to a broker licensed under this chapter the customary commissions upon insurance placed through the broker.

(c) A license as a consultant may cover:

(1) Life and disability;

(2) Property and casualty which includes surety and marine; or

(3) Both subdivisions (c)(1) and (2) of this section.

**History.** Acts 1959, No. 148, §§ 162, 164; A.S.A. 1947, §§ 66-2819, 66-2821; Acts 1987, No. 622, § 10; 1997, No. 1004, § 1; 2001, No. 580, § 11.

**Publisher's Notes.** This section was formerly codified as § 23-64-208. Former § 23-64-207 has been renumbered as § 23-64-206.

### 23-64-208. [Repealed.]

**Publisher's Notes.** This section, concerning brokers' surety bonds, was repealed by Acts 2001, No. 580 § 12. The section was derived from Acts 1959, No. 148, § 163; A.S.A. 1947, § 66-2820; Acts 1987, No. 622, § 11; 1997, No. 1004, § 1.

This section was formerly codified as § 23-64-209. Former § 23-64-208 has been renumbered as § 23-64-207.

### 23-64-209. Qualifications for adjuster's license.

(a) No person shall, in this state, act as or hold himself or herself out to be an adjuster unless then licensed therefor under this chapter. Application for license shall be made to the Insurance Commissioner according to forms as prescribed and furnished by him or her. The commissioner shall issue the adjuster's license for property insurance, or for casualty insurance, or for workers' compensation insurance, or for any combination thereof as to individuals qualified therefor upon payment of the nonrefundable license fee stated in § 23-61-401.

(b) To be licensed as an adjuster, the applicant must be qualified as follows:

(1) Must be of the legal age of majority, or have had the disabilities of minority removed for all general purposes and provide evidence of same;

(2) Must be a resident of Arkansas, or resident of another state which will permit residents of Arkansas to act as adjusters in the other state;

(3) Must be a full-time salaried employee of a licensed adjuster, or a graduate of a recognized law school, or must have had experience or special education or training as to the handling of property, casualty, or workers' compensation loss claims under insurance contracts of sufficient duration and extent reasonably to make him or her competent to fulfill the responsibilities of an adjuster;

(4) Must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation;

(5) Must have and maintain in this state an office accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to

prohibit maintenance of an office in the home of the licensee. A licensed, nonresident adjuster shall not be required to maintain an office in this state;

(6)(A)(i) Must pass a written examination as to his or her competence to act as a property, casualty, or workers' compensation insurance adjuster as shall be required by the commissioner.

(ii) The commissioner may give, conduct, and grade all examinations or he or she may arrange to have examinations administered and graded by an independent testing service as specified by contract, in a fair and impartial manner, and without unfair discrimination as between individuals examined.

(iii) The commissioner may require a waiting period of four (4) weeks before reexamination of an applicant who thrice failed to pass previous similar examinations. This waiting period applies after every third unsuccessful attempt.

(iv) The nonrefundable application fee shall be the same as that charged an applicant for license as an agent or broker under § 23-61-401.

(B)(i) If the application is approved and if the nonrefundable application fee is paid, an examination permit will be issued to the applicant.

(ii) The permit will be valid for a period of ninety (90) days from the date of issuance.

(iii) If the applicant does not schedule and appear for examination within that ninety-day period, the permit shall expire and the applicant may be required to file a new application and shall pay another nonrefundable application fee before issuance of another examination permit to the applicant.

(iv) If the applicant appears for examination but fails to pass such an examination, the applicant shall be required to pay a nonrefundable reexamination fee before reexamination.

(C) By reciprocal arrangements with the insurance supervisory official in the other state, the commissioner may waive written examination of a nonresident applicant for license as an adjuster, if the official certifies that the applicant is licensed as a resident adjuster of that state and has complied with its qualification standards therefor.

(c) A firm, limited liability company, or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is named in the license and is qualified as for an individual licensed as adjuster. An additional full license fee shall be paid as to each individual in excess of one (1), so named in the license to exercise its powers.

(d) An adjuster who is sent into this state on behalf of an insurer for the purpose of investigating or making adjustment of a loss resulting from a catastrophe under an insurance policy is not required to be qualified or licensed under this section if within ten (10) business days of entering the state the adjuster notifies the commissioner in writing of the adjuster's activities on behalf of the insurer.



(e)(1)(A) Unless exempt under subdivision (e)(2) of this section, a licensed adjuster shall successfully complete and report a minimum of twenty-four (24) hours of continuing education courses approved by the commissioner within the time established by rule of the commissioner.

(B) At least three (3) hours of continuing education required by this subsection shall be in an ethics course approved by the commissioner.

(2) This subsection does not apply to an adjuster licensed in:

(A) This state for less than one (1) year; or

(B) Another state if the adjuster has satisfied the continuing education requirements of the licensing state.

**History.** Acts 1959, No. 148, § 176; 1983, No. 522, § 21; 1985, No. 804, § 20; A.S.A. 1947, § 66-2833; Acts 1987, No. 622, §§ 15-17; 1997, No. 1004, § 1; 1999, No. 657, §§ 4, 5; 2009, No. 726, §§ 25-27.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-64-202.

For cumulative effect of 1985 amendment to this section, see Publisher's Notes to § 23-64-201.

Acts 1985, No. 804, § 20, provided in

part that the examination requirement in subdivisions (b)(6) (A)-(C) of this section should apply only to resident applicants for licenses as adjusters as of January 1, 1986.

This section was formerly codified as § 23-64-210. Former § 23-64-209 has been renumbered as § 23-64-208.

**Amendments.** The 2009 amendment deleted (b)(6)(A)(v); rewrote (d); and added (e).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

### **23-64-210. Licensing of adjuster and insurance consulting partnerships, limited partnerships, joint ventures, limited liability companies, and corporations.**

(a)(1)(A) An adjusting or insurance consulting partnership, limited partnership, joint venture, limited liability company, or corporation may be licensed only as a licensee.

(B) If a partnership, limited partnership, or joint venture, each general partner and each other individual to act for it under the license, and if a limited liability company or a corporation, each individual to act for it under the license, shall be named in the license and shall qualify for the license as though an individual licensee.

(2) The Insurance Commissioner shall charge, and the licensee shall pay, a full additional license fee as to each respective individual so named in the license in excess of one (1) licensee.

(b)(1) The commissioner in his or her discretion may issue a license to a partnership, limited partnership, joint venture, limited liability company, or corporation organized under the laws of another state if the partnership, limited partnership, joint venture, limited liability com-

pany, or corporation is licensed as a resident licensee under the laws of its state of domicile.

(2)(A) Each individual authorized to act on behalf of a partnership, limited partnership, joint venture, limited liability company, or corporation under the license shall be named in the license and shall qualify therefor as though an individual licensee under the provisions of the Arkansas Insurance Code.

(B) The commissioner shall charge, and the licensee shall pay, a full additional license fee as to each respective individual licensee in the license in excess of one (1), in the amounts stated in § 23-61-401 and any existing or future rule and regulation.

(3) The nonresident licensee shall promptly notify the commissioner of all changes among its members, partners, directors, managers, and officers, and all other individuals designated in the license.

(c) Within ten (10) days, each licensee shall notify the commissioner of all changes among its members, directors, officers, and all other individuals designated in the license.

(d)(1) Every firm, limited liability company, or corporation licensed and every applicant for a license shall file with the commissioner the true name of the firm, limited liability company, or corporation and also all fictitious names under which it conducts or intends to conduct its business and, after licensing, shall file with the commissioner any change in or discontinuance of those names.

(2) The commissioner may disapprove in writing the use of any name on any of the following grounds:

(A) The name is identical to or is similar to that of another licensee so as to confuse or otherwise mislead the public;

(B) The name includes words or phrases that may mislead the public as to activities not authorized under the license or which are in violation of any insurance law or insurance regulation;

(C) The name states, infers, or implies that the firm, limited liability company, or corporation is an insurer, motor club, or hospital service plan or entitled to engage in insurance activities not permitted under the license applied for or held; or

(D) Other reasonable grounds as the commissioner may determine.

(3) The grounds specified in subdivisions (d)(2)(B) and (d)(2)(D) of this section shall not be applicable to the true name of any firm or corporation which on March 21, 1985, held a license issued under this subchapter.

(e) In the event an insurer does not wish to provide for the authority of all such agents authorized under the license of a partnership, limited partnership, joint venture, limited liability company, or corporation to act on their behalf, that insurer may appoint specific agents individually within it, and they may act on the behalf of the insurer, but only:

(1) While acting on the behalf of the partnership, limited partnership, joint venture, limited liability company, or corporation; and

(2) If among those specific agents individually appointed, there is one (1) general partner, one (1) officer of the corporation, or one (1) manager of the limited liability company or joint venture.

(f) Every partnership, limited partnership, joint venture, limited liability company, or corporation receiving a license pursuant to this section, shall designate and continuously maintain in the state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A state bank, domestic corporation, or not-for-profit corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

(g)(1) The partnership, limited partnership, joint venture, limited liability company, or corporation may change its registered office or registered agent by delivering to the commissioner for filing a statement of change that sets forth:

(A) Its name;

(B) The street address of its current registered office;

(C) If the current registered office is to be changed, the street address of its new registered office;

(D) The name of its current registered agent;

(E) If the current registered agent is to be changed, the name of its new registered agent with the new agent's written consent to the appointment, either on the statement or attached to it; and

(F) That after the change or changes are made, the street addresses of its registered office and the business office of its reciprocal agent will be identical.

(2) If a registered agent changes the street address of the registered agent's business office, he or she may change the street address of the registered office of any foreign insurer holding a certificate of authority to transact business in Arkansas or any domestic reciprocal insurer for which he or she is the registered agent by:

(A) Notifying the insurer in writing of the change; and

(B) Signing, either manually or in facsimile, and delivering to the commissioner for filing a statement of change that:

(i) Complies with the requirements of subsection (a) of this section; and

(ii) Recites that the insurer has been notified of the change.

(h)(1) The registered agent of a partnership, limited partnership, joint venture, limited liability company, or corporation, holding a license under this section, may resign his or her agency appointment by signing and delivering to the commissioner for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.



(2) After filing the statement, the commissioner shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The commissioner shall mail the other copy to the partnership, limited partnership, joint venture, limited liability company, or corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(i)(1) The registered agent of a partnership, limited partnership, joint venture, limited liability company, or corporation holding a license issued pursuant to this section in Arkansas is the insurer's agent for service of process, notice, or demand required or permitted by law to be served on it.

(2) A partnership, limited partnership, joint venture, limited liability company, or corporation may be served by registered or certified mail, return receipt requested, addressed to its managing partner, manager, president, or secretary at its principal office shown in its application for a license if it:

(A) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(B) Has withdrawn from transacting business in this state; or

(C) Has had its license revoked under this subchapter.

(3) Service is perfected at the earliest of:

(A) The date the insurer receives the mail;

(B) The date shown on the return receipt, if signed on behalf of the insurer; or

(C) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means or necessarily the required means of serving a partnership, limited partnership, joint venture, limited liability company, or corporation holding a license under this section.

**History.** Acts 1959, No. 148, § 155; 1983, No. 522, §§ 13, 14; 1985, No. 484, §§ 1, 2; A.S.A. 1947, §§ 66-2812, 66-2812.1, 66-2812.2; Acts 1987, No. 456, § 11; 1987, No. 622, § 3; 1991, No. 1143, § 1; 1997, No. 1004, § 1; 2001, No. 580, § 13.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-64-202.

This section was formerly codified as § 23-64-211. Former § 23-64-210 has been renumbered as § 23-64-209.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

## CASE NOTES

**Cited:** E.H. Crump & Co. v. Gatewood, 497 F. Supp. 549 (E.D. Ark. 1980); Estate of Eckel v. Narciso, 146 B.R. 792 (Bankr. E.D. Ark. 1992).

**23-64-211 — 23-64-213. [Repealed.]**

**Publisher's Notes.** These sections, concerning nonresident agents or brokers licenses and temporary licenses, were repealed by Acts 2001, No. 580, §§ 14-16. The sections were derived from the following sources:

23-64-211. Acts 1959, No. 148, § 169; A.S.A. 1947, § 66-2826; Acts 1987, No. 622, § 12; 1991, No. 477, § 1; 1997, No. 1004, § 1; 1999, No. 657, § 6.

This section was formerly codified as § 23-64-212. Former § 23-64-211 has been renumbered as § 23-64-210.

23-64-212. Acts 1959, No. 148, § 167; 1967, No. 478, § 1; A.S.A. 1947, § 66-2824; Acts 1997, No. 1004, § 1.

This section was formerly codified as § 23-64-214. Former § 23-64-212 has been renumbered as § 23-64-211.

23-64-213. Acts 1959, No. 148, § 168; A.S.A. 1947, § 66-2825; Acts 1997, No. 1004, § 1.

This section was formerly codified as § 23-64-215. Former § 23-64-213, concerning solicitor's license and appointment, was repealed by Acts 1997, No. 1004, § 1. The section was derived from Acts 1959, No. 148, § 166; A.S.A. 1947, § 66-2823.

**23-64-214. Issuance of license — Form and content of license.**

(a) The Insurance Commissioner shall promptly issue adjuster or insurance consultant's licenses applied for to persons qualified therefor in accordance with this chapter.

(b) The license shall state the name and address of the licensee, the date of issue, general conditions relative to expiration or termination, kind or kinds of insurance covered, the license number as determined and assigned by the commissioner, and the other conditions of the license.

(c) If the licensee is other than an individual, the license shall also state the name of each individual authorized thereunder to exercise the license powers.

**History.** Acts 1959, No. 148, § 158; 1983, No. 522, § 18; A.S.A. 1947, § 66-2815; Acts 1987, No. 622, § 7; 1993, No. 652, § 13; 1993, No. 901, § 23; 1997, No. 1004, § 1; 2001, No. 580, § 17.

**Publisher's Notes.** For cumulative ef-

fect of 1983 amendment to this section, see Publisher's Notes to § 23-64-202.

This section was formerly codified as § 23-64-216. Former § 23-64-214 has been renumbered as § 23-64-212.

**23-64-215. Continuance of license.**

(a) Unless the license of an insurance adjuster or an insurance consultant is not renewed, expires, is suspended, is revoked, or is terminated, the licensee may continue the license by:

(1) Paying annually or biennially the continuation of license fee prescribed by rule of the Insurance Commissioner; and

(2) Complying with all other rules of the commissioner for continuing the license.

(b)(1) A licensee who allows his or her license to lapse may reinstate the license within twelve (12) months after the due date of the continuation of license fee without the necessity of passing a written examination.

(2) However, a penalty in the amount of double the unpaid continuation of license fee shall be required for any continuation of license fee received after the due date.

**History.** Acts 1959, No. 148, § 177; 1973, No. 66, § 5; A.S.A. 1947, § 66-2834; Acts 1987, No. 622, § 18; 1993, No. 901, §§ 24, 25; 1997, No. 1004, § 1; 1999, No. 657, § 7; 2001, No. 580, § 18; 2009, No. 726, § 28.

**A.C.R.C. Notes.** As originally enacted by Acts 1993, No. 901, § 24, former subdivision (d)(1) began: "Commencing on and after January 1, 1994."

**Publisher's Notes.** This section was formerly codified as § 23-64-217. Former § 23-64-215 has been renumbered as § 23-64-213.

**Amendments.** The 2009 amendment rewrote (a); subdivided (b), substituted "continuation of license" for "renewal" in three places, and made a minor stylistic change.

### **23-64-216. Suspension or revocation.**

(a) The Insurance Commissioner may suspend for up to thirty-six (36) months, may revoke or refuse to continue, or may place in probationary status any license issued by him or her if after notice to the licensee and after hearing he or she finds any one (1) or more of the following causes exist:

(1) In the case of an insurance producer or broker licensed as an insurance producer, for any of the causes under § 23-64-512; or

(2) In the case of an adjuster or insurance consultant licensed under this subchapter:

(A) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(B) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;

(C) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(D) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

(E) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(F) Having been convicted of a felony;

(G) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(H) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(I) Having an insurance producer, insurance consultant, or adjuster license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;



(J) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(K) Improperly using notes or any other reference material to complete an examination for an insurance license;

(L) Knowingly accepting insurance business from an individual who is not licensed;

(M) Failing to comply with an administrative or court order imposing a child support obligation; or

(N) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) For purposes of this section, licenses also include permits, registrations, or certificates of authority.

(c) The license of a firm, limited liability company, or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers.

(d)(1) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license, the commissioner in his or her discretion may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation or, if the commissioner has found willful misconduct or willful violation on the part of the licensee, up to five thousand dollars (\$5,000) per violation.

(2) The administrative penalty may be augmented, in the commissioner's discretion, by an amount equal to any commissions received by or accruing to the credit of the licensee for any transaction related to the proceeding against the licensee.

(3) The commissioner may also order restitution of actual losses to affected persons.

(e)(1) If the commissioner determines that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in his or her order, pending an administrative hearing, the commissioner may:

(A) Issue a summary suspension of any license issued by him or her; or

(B) Issue an emergency cease and desist order.

(2) A hearing held under this subsection shall be promptly instituted.

(f)(1) If upon notice and hearing the commissioner finds that the licensee has violated a provision of the insurance laws of this state or any rule, regulation, or order of the commissioner and that the licensee previously has been found to have violated provisions of the insurance laws of this state or any rule, regulation, or order of the commissioner, by an order of the commissioner after hearing or by an order entered with the consent and agreement of the parties, the commissioner may take judicial notice of the previous orders against the licensee and, within the commissioner's discretion, may enhance or increase the penalties ordered in the current proceeding as to the licensee, and the commissioner shall incorporate a finding to that effect in his or her order.

(2) Statutory or regulatory violations for which an order has been entered as to the licensee by the insurance department or equivalent regulatory body in any other jurisdiction may be taken into consideration and included in assessing the enhanced or increased penalties provided in subdivision (f)(1) of this section.

(g) The penalties recited in this section may be imposed by the commissioner for violations of the Arkansas Insurance Code or other applicable laws, or rules or orders of the commissioner, committed by any resident agent whose license is on inactive or retired status.

(h) For purposes of this section, “probationary status” means the suspended imposition of insurance license sanctions that the commissioner may impose by law or by informed consent on a licensee subject to this chapter, upon disclosed terms and for a specified period, contingent upon the compliance and good conduct of the licensee during that period, and that would result in imposition of insurance license sanctions upon the licensee’s failure to successfully complete the specified period.

**History.** Acts 1959, No. 148, § 178; 1973, No. 66, § 6; 1983, No. 522, § 22; A.S.A. 1947, § 66-2835; Acts 1987, No. 622, § 19; 1993, No. 901, § 26; 1997, No. 1004, § 1; 2001, No. 580, § 19; 2003, No. 1203, §§ 3, 4; 2011, No. 760, § 6.

**Publisher’s Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

For cumulative effect of 1983 amendment to this section, see Publisher’s Notes to § 23-64-202.

This section was formerly codified as § 23-64-218. Former § 23-64-216 has been renumbered as § 23-64-214.

**Amendments.** The 2011 amendment subdivided (e) and inserted (e)(1)(B); and substituted “A hearing held under this subsection” for “The hearing” in (e)(2).

## CASE NOTES

### Felony Conviction.

Agent’s license to sell insurance could not be revoked on the basis of his conviction of a felony because the imposition of felony sentence was suspended and, consequently, the agent had not been convicted by final judgment within the meaning of this section. *Sutherland v. Arkansas Dep’t of Ins.*, 250 Ark. 903, 467 S.W.2d 724 (1971).

Insurance salesman who was convicted of harassing communications was not issued a license, because one criterion for issuance of an agent’s license is a “good personal and business reputation.” *Wacaser v. Insurance Comm’r*, 321 Ark. 143, 900 S.W.2d 191 (1995).

## 23-64-217. Procedure following suspension or revocation.

(a)(1) Upon the suspension or revocation of a license, the Insurance Commissioner shall immediately notify the licensee of the suspension or revocation either in person or by mail addressed to the licensee at the licensee’s address last of record with the commissioner or by electronic notice.

(2) Notice by mail or by electronic mail shall be deemed effectuated when so mailed.

(3) The commissioner shall give like notice to the insurers represented by the agent in the case of an agent's license. Upon receipt of notice from the commissioner that the license has been revoked, each insurer represented by the agent shall take appropriate and prompt action necessary to:

(A) Retrieve from the agent all solicitation materials, policy applications, binders, and all other materials in the possession of the agent that are the property of such an insurer; and

(B) Retrieve the agent's policyholder files and records for policies in force at the time such an insurer receives notice of the revocation.

(b) The commissioner may not again issue a license under the Arkansas Insurance Code to any person whose license has been revoked until after the expiration of three (3) years, and thereafter not until:

(1) The person has paid in full any fines, administrative penalties, or monetary penalties imposed on the person at the time of revocation;

(2) The person has paid restitution of actual losses to affected persons when the order of revocation contains findings that the conduct of the person resulted in actual losses to affected persons; and

(3) The person again qualifies for license in accordance with the applicable provisions of the Arkansas Insurance Code.

(c) If the license of a firm, limited liability company, or corporation is so suspended or revoked, no member of the firm or limited liability company or officer or director of the corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

**History.** Acts 1959, No. 148, § 179; A.S.A. 1947, § 66-2836; Acts 1987, No. 622, § 20; 1993, No. 901, § 27; 1997, No. 1004, § 1; 2003, No. 1203, § 5.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

This section was formerly codified as § 23-64-219. Former § 23-64-217 has been renumbered as § 23-64-215.

### **23-64-218. Return of license to Insurance Commissioner.**

(a)(1) All licenses issued under this chapter, although issued and delivered to the licensee, shall at all times be the property of the State of Arkansas.

(2) Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall immediately deliver it to the Insurance Commissioner either by personal delivery or by mail.

(b) As to any license lost, stolen, or destroyed while in the possession of any licensee or person, the commissioner may accept, in lieu of return of the license, the affidavit of the licensee or other person responsible for or involved in the safekeeping of the license concerning the facts of the loss, theft, or destruction.



(c) Any licensee who ceases to maintain his or her residence in this state shall deliver his or her insurance license to the commissioner within ten (10) days after terminating his or her residency.

**History.** Acts 1959, No. 148, § 180; 1983, No. 522, § 23; A.S.A. 1947, § 66-2837; Acts 1997, No. 1004, § 1.

This section was formerly codified as § 23-64-220. Former § 23-64-218 has been renumbered as § 23-64-216.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-64-202.

### **23-64-219. Appointment of agent — Continuation or termination of appointment.**

(a)(1)(A) Each insurer appointing an agent in this state shall file with the Insurance Commissioner the initial appointment setting out the kinds of insurance to be transacted by the agent and pay the fee.

(B) The appointment means the notification filed with the commissioner that an insurer has established an agency relationship with a producer.

(2) The appointing insurer's appointment of an agent shall be an indication to the commissioner that the insurer has reviewed the agent's background and fitness to be an agent.

(b) Each appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or agent.

(c)(1) Biennially, prior to June 1 of each even-numbered year, each insurer maintaining a certificate of authority to transact life and accident and health insurance and, prior to June 1 of each odd-numbered year, all other insurers maintaining a certificate of authority to transact insurance in this state shall file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the biennial continuation of appointment fee as provided in § 23-61-401. At the same time, the insurer shall also file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments in this state are not to remain in effect, accompanied by any documentation the commissioner shall require.

(2) The procedures for renewal and termination of appointments under this subsection shall terminate on December 31, 2003.

(d) Beginning January 1, 2004, the following annual procedures apply for appointment terminations and renewals only:

(1)(A) No later than June 1, 2004, and no later than June 1 annually thereafter, while maintaining a certificate of authority to transact insurance in the state, the insurance company shall terminate any appointments the company does not desire to continue by use of written or electronic notice to the commissioner on forms prescribed by the commissioner.

(B) The terminations shall be transmitted after the insurer reviews its own agent or agency appointments via the State Insurance Department website, the National Association of Insurance Commissioners' producer database, or a list requested of the department's Information Systems Division;

(2)(A) After June 1, 2004, and after June 1 annually thereafter, the department shall issue a written or electronic payment invoice to the insurer, based on all agent appointments the insurer chose to renew and keep active after June 1, 2004, and annually thereafter, in the procedures set out in subdivision (d)(1) of this section.

(B) The invoice under this section may not be altered, amended, or used for appointing or terminating producers;

(3)(A) The insurer shall return monetary payment for the department invoices to the commissioner no later than thirty (30) days after the department issues the invoice unless, at the request of the appointing insurer, the commissioner grants an extension for good cause in writing.

(B) An insurer's failure to remit timely invoice payments in the correct amount may be penalized by the commissioner with a monetary penalty in an amount not to exceed double the appointment fee; and

(4)(A) If the insurer disagrees with the annual invoice amount for the renewed agent appointments, it shall timely remit the invoice amount to the department but may mail or electronically mail under separate cover adequate documentation to substantiate its proposed invoice for the department's review.

(B) If the insurer underpaid, it shall promptly remit the monetary balance due the department.

(C) If the insurer overpaid, it shall so state in a written filing to the commissioner.

(D) If the department determines that the insurer is correct as to the overpayment amount, the department shall process a refund of the excess fees to the prevailing insurer.

(E) However, if the department determines the insurer is not correct, then the department may issue a written notice to the insurer.

(e) The insurer shall give notice, in any written or electronic method prescribed by the commissioner, of nonrenewal or termination of agent or producer appointments to the commissioner and to the producer and shall retain the notices or electronic transmittals as part of the insurer's records for compliance under this section and under § 23-64-515.

**History.** Acts 1959, No. 148, § 160; 1973, No. 66, § 4; 1983, No. 522, § 20; A.S.A. 1947, § 66-2817; Acts 1987, No. 622, § 9; 1991, No. 487, § 1; 1993, No. 901, § 28; 1997, No. 1004, § 1; 2001, No. 1603, §§ 16, 17; 2003, No. 1203, § 6.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-64-202.

This section was formerly codified as § 23-64-221. Former § 23-64-219 has been renumbered as § 23-64-217.

**Cross References.** False statements by agents, § 23-66-302.

Soliciting for unauthorized companies prohibited, § 23-65-101.

## CASE NOTES

### ANALYSIS

Immunity.  
Requirement.  
Termination.  
Unregistered Agents.

#### Immunity.

Insurance agency was not entitled to absolute immunity under this section because a complaint letter it had sent to the state insurance commissioner regarding one of its agents was not considered to be "part of" the notice of termination; complaint letter had been sent 16 months after it sent the required notice and, thus, the insurance company was not absolutely immunized from suits arising out of the sending of it. *Gosney v. Reliable Life Ins. Co.*, 293 F.3d 1052 (8th Cir. 2002).

#### Requirement.

No one becomes an agent or licensed agent unless and until he is appointed as an agent of some particular insurance company authorized to do business in the state. *Schneider v. O'Neal*, 145 F. Supp. 120 (E.D. Ark. 1956), *aff'd* in part, re-

versed in part, 243 F.2d 914 (8th Cir. 1957) (decision under prior law).

#### Termination.

The provision in an agency contract permitting termination without cause is consistent with express Arkansas law; extending the employment law public policy exception to independent insurance agents would effectively nullify the termination-without-cause provision in such a contract, contrary to this express statutory authorization. *McNeill v. Security Benefit Life Ins. Co.*, 28 F.3d 891 (8th Cir. 1994).

#### Unregistered Agents.

Failure to certify to the Insurance Commissioner name of allegedly authorized agent was no defense to action by insured on policy written by the agent. *Fireman's Fund Ins. Co. v. Leftwich*, 192 Ark. 159, 90 S.W.2d 497 (1936) (decision under prior law).

Status of agent of insurance company not registered with the Insurance Commissioner is not restricted to that of a soliciting agent. *Fireman's Fund Ins. Co. v. Leftwich*, 192 Ark. 159, 90 S.W.2d 497 (1936) (decision under prior law).

## 23-64-220. Place of business — Maintenance of records.

(a)(1) Every resident agent or resident broker shall have and maintain in this state, or in a city or town in another state through which passes the boundary of this state, a place of business accessible to the public.

(2) The place of business shall be that wherein the licensee principally conducts transactions under his or her license.

(3) The address of the place shall appear upon the license, and the licensee shall promptly notify the Insurance Commissioner in writing of any change of address within ten (10) days of that change of address.

(4) Nothing in this section shall be deemed to prohibit maintenance of the place of business in the licensee's place of residence in this state.

(b) The licenses of the licensee shall be conspicuously displayed in the place of business in a part thereof customarily open to the public.

(c)(1)(A) The agent or broker shall keep at his or her place of business the usual and customary records pertaining to transactions under his or her license for at least:

(i) Five (5) years from the date the record was created; or



(ii) One (1) year following the final settlement or final adjudication of a criminal proceeding, civil litigation, or an administrative proceeding:

(a) Commenced within five (5) years from the date the record was created; and

(b) Involving records pertaining to a transaction conducted by the agent or broker under his or her license.

(B) A record required to be kept by this subsection may be maintained in its original form, electronically, or as a hard copy.

(2) As used in this subsection, "usual and customary records" means:

(A) Applications;

(B) Memoranda;

(C) Notations of telephone conversations or other communications;

(D) Billing information;

(E) Correspondence;

(F) Policy information;

(G) Claims files; and

(H) Any other records detailing insurer information or insurance policies or contracts bound through the agent or broker.

**History.** Acts 1959, No. 148, § 172; § 23-64-220 has been renumbered as A.S.A. 1947, § 66-2829; Acts 1997, No. § 23-64-218.  
1004, § 1; 2009, No. 726, § 29.

**Publisher's Notes.** This section was formerly codified as § 23-64-222. Former **Amendments.** The 2009 amendment rewrote (c).

## 23-64-221. Vending machines.

(a) A licensed producer may solicit applications for and issue policies of personal travel and accident insurance by means of mechanical vending machines supervised by him or her and placed at airports, railroad stations, bus stations, hotels, and similar places of convenience to the traveling public if the Insurance Commissioner finds that:

(1) The policy to be so sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine therefor in a particular proposed location would be of material convenience to the public;

(2) The type of vending machine proposed to be used is reasonably suitable and practical for the purpose;

(3) Reasonable means are provided for informing the prospective purchaser of the policy of the coverage and restrictions of the policy; and

(4) Reasonable means are provided for refund to the applicant or prospective applicant of money inserted in defective machines and for which no insurance or a less amount than that paid for is actually received.

(b)(1) As to each machine to be so used, the commissioner shall issue to the agent a special vending machine license.

(2) The license shall specify the name and address of the insurer and agent, the name of the policy to be sold, the serial number of the machine, and the place where the machine is to be in operation.

(3) The license shall be subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the agent.

(4) The commissioner shall also revoke the license as to any machine for which he or she finds that the conditions upon which the machine was licensed, as referred to in subsection (a) of this section, no longer exist.

(5) The license fee shall be as stated in § 23-61-401 for each license year or part of a year for each respective vending machine.

(6) Proof of the existence of a subsisting license shall be displayed on or about each vending machine in use in such a manner as the commissioner may reasonably require.

(c) Application for insurance issued by any vending machine must be signed by or on behalf of the individual to be so insured, as provided in § 23-79-105.

**History.** Acts 1959, No. 148, § 171; formerly codified as § 23-64-223. Former A.S.A. 1947, § 66-2828; Acts 1997, No. 1004, § 1; 2003, No. 1203, § 7. § 23-64-221 has been renumbered as § 23-64-219.

**Publisher's Notes.** This section was

### 23-64-222. [Repealed.]

**Publisher's Notes.** This section, concerning payment of commissions, was repealed by Acts 2003, No. 1203, § 8. The section was derived from Acts 1959, No. 148, § 173; A.S.A. 1947, § 66-2830; Acts 1987, No. 622, § 14; 1993, No. 901, § 29; 1997, No. 1004, § 1; 2001, No. 1603, § 18.

### 23-64-223. Fiduciary duties of licensees.

(a) All funds, fees, moneys, premiums, or return premiums received by a licensee in the capacity as a licensee shall be trust funds so received by the licensee in a fiduciary capacity, and the licensee shall in the applicable regular course of business account for and pay these funds, fees, moneys, premiums, or return premiums to the insured, insurer, licensee, or any other person entitled thereto.

(b) Any licensee who, not being lawfully entitled thereto, diverts or appropriates those funds or any portion thereof to his or her own use shall upon conviction be guilty of theft of property and shall be punished as provided by law.

**History.** Acts 1959, No. 148, § 174; This section was formerly codified as 1985, No. 804, § 14; A.S.A. 1947, § 66-2831; Acts 1997, No. 1004, § 1. § 23-64-225. Former § 23-64-223 has been renumbered as § 23-64-221.

**Publisher's Notes.** For cumulative effect of 1985 amendment to this section, see Publisher's Notes to § 23-64-201.

### RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

## CASE NOTES

**Cited:** State v. Hagan-Sherwin, 356 Ark. 597, 158 S.W.3d 156 (2004).

**23-64-224. Combination agent and broker license.**

(a) A licensed agent may be licensed as a broker and be a broker as to insurers for which he or she is not then licensed as agent.

(b) A licensed broker may be licensed as and be an agent as to insurers appointing him or her as agent.

(c) The sole relationship between a broker and an insurer as to which he or she is then licensed as an agent, as to transactions arising during the existence of the agency appointment, shall be that of insurer and agent and not that of insurer and broker.

**History.** Acts 1959, No. 148, § 165; formerly codified as § 23-64-226. Former A.S.A. 1947, § 66-2822; Acts 1997, No. § 23-64-224 has been renumbered as 1004, § 1. § 23-64-222.

**Publisher's Notes.** This section was

**23-64-225. Excess or rejected business.**

A licensed agent authorized to sell life or accident and health insurance may place, from time to time, excess or rejected risks in any other life or accident and health insurer authorized to transact insurance in this state with the knowledge and approval of the insurers as to which the agent is so appointed and may receive a commission thereon without being required to have an appointment as to the other insurer.

**History.** Acts 1959, No. 148, § 175; formerly codified as § 23-64-227. Former A.S.A. 1947, § 66-2832; Acts 1997, No. § 23-64-225 has been renumbered as 1004, § 1; 2001, No. 1603, § 19. § 23-64-223.

**Publisher's Notes.** This section was

**23-64-226. Termination rights of agents.**

Following termination of any agency appointment as to property, casualty, or surety insurance, subject to consent of the insurer and to the terms of the insurer's contract with the agent, the agent may continue to service, and receive from the insurer commissions or other compensation relative to, business written by him or her for the insurer during the existence of the appointment.

**History.** Acts 1959, No. 148, § 161; formerly codified as § 23-64-228. Former A.S.A. 1947, § 66-2818; Acts 1997, No. § 23-64-226 has been renumbered as 1004, § 1. § 23-64-224.

**Publisher's Notes.** This section was



**23-64-227. Appointment of Insurance Commissioner as agent for service of process.**

(a) Application for an acceptance of any nonresident license provided under this chapter shall thereby be deemed to constitute irrevocable appointment of the Insurance Commissioner as the agent of the licensee for the acceptance of service of process issued in this state in any action or proceeding against the licensee arising out of such licensing or at any time out of transactions under the license.

(b)(1) Duplicate copies of the process shall be served upon the commissioner or upon his or her deputy, assistant, or other person in charge of his or her office during his absence.

(2) Upon receiving the service, the commissioner shall promptly forward a copy of it by registered mail, return receipt requested, to the nonresident licensee at his or her business address last of record with the commissioner.

(3) When process is served upon the commissioner as a nonresident's process agent, the licensee shall be required to appear, answer, or plead within thirty (30) days after date of the mailing of the copy of the process by the commissioner.

(4) Process served upon the commissioner and a copy forwarded shall for all purposes constitute service upon the person licensed.

**History.** Acts 1959, No. 148, § 170; formerly codified as § 23-64-229. Former A.S.A. 1947, § 66-2827; Acts 1987, No. § 23-64-227 has been renumbered as 622, § 13; 1997, No. 1004, § 1. § 23-64-225.

**Publisher's Notes.** This section was

**23-64-228, 23-64-229. [Transferred.]**

**Publisher's Notes.** These sections 1004 as §§ 23-64-226 and 23-64-227, respectively have been renumbered by Acts 1997, No. 1004, § 13.

**23-64-230. Renewal of policies after agent's termination.**

(a)(1) Any insurance company authorized to transact fire or casualty business in this state shall, upon termination of an agent's appointment by the company, permit the renewal of all contracts of insurance written by the agent for a period of twelve (12) months from the date of the termination, as determined by the individual underwriting requirements of the company, unless the insurance company is deemed by the Insurance Commissioner to be in a hazardous, impaired, or insolvent condition.

(2) Provided, in the case of a contract not meeting the underwriting requirements, the company shall give the agent sixty (60) days' notice of its intention not to renew the contract.

(3) Provided further that the periods of time may be reduced as the commissioner may deem necessary to adequately protect the insured or to secure the solvency of the company.

(b)(1) No insurance agency contract entered into in this state by a licensed insurer with an insurance agent licensed under § 23-64-101 et

seq. shall be terminated by the licensed insurer unless the agent is given at least ninety (90) days' advance written notice of the intent to terminate the contract.

(2) Provided, if the contract is cancelled for failure of the agent to pay over moneys due the insurer after written demand therefor or for breach of contract, the advance notice shall not be required.

(3) Provided further, during the ninety-day period after any such notice, the licensed insurance agent shall not write or bind any new business on behalf of the licensed insurer without the specific written approval of the business by the insurer.

(c) Any insurance company renewing contracts of insurance in accordance with this section shall pay commissions for the renewals to the terminated agent in the same amount as had been paid to him or her on similar policies during the twelve (12) months immediately preceding the notice of termination.

(d) The provisions of this section shall not apply to any contract with an agent for the sale of life or accident and health insurance.

(e) The provisions of this section shall not be applicable to any insurer which writes insurance only for members of a specific organization or to any agent of the insurer.

(f)(1) This section shall not apply to agents or brokers of a company or group of companies whose agents or brokers by contractual agreement represent only that company or group of companies or whose agents are required by contractual agreement to submit all applications for insurance for the classes and lines underwritten by such a company or group of companies to that company or group of companies, and the book of business is owned by the company or group of companies.

(2) The cancellation of any agent's or broker's contractual agreement shall not result in the cancellation or refusal to renew any policy of insurance.

**History.** Acts 1997, No. 908, § 1; 1999, No. 115, § 1.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 23-64-210 and 23-64-216 may not apply to this section, which

was enacted subsequently.

References to "this chapter" in subchapters 1 and 2 may not apply to this section, which was enacted subsequently.

### **23-64-231. Settlement with terminated producers required.**

(a) All life and accident and health insurance companies doing business in the State of Arkansas, as a condition of doing business in this state, shall make settlement with their authorized producers whose services are terminated by any insurance company, for all commissions then due and owing, and thereafter make settlement, from time to time, according to the terms of the contract of employment.

(b) Whenever any life and accident and health insurance company in this state shall merge with, or be absorbed by, another life and accident and health insurance company or another insurance company, the successor company shall succeed to all of the obligations of the merged or absorbed company with regard to any unpaid settlements due

producers of the merged or absorbed company under the provisions of this section.

(c) Nothing in this section shall prevent either party to the contract from resorting to any legal recourse now or hereafter available to the party.

**History.** Acts 2001, No. 1604, § 42.

### **23-64-232. Premium delinquencies — Definitions.**

(a) For purposes of this section:

(1) “Account current” or “account rendered” means any system of account reconciliation between two (2) or more insurance producers, surplus lines brokers, or insurance companies that purports to render the status of the account between them in regard to the amount of net premium or return premium due;

(2) “Insurance producer” shall have the meaning found in § 23-64-502 and shall also include surplus lines brokers;

(3) “Insurer” shall have the meaning found in § 23-60-102 and shall include a surplus lines broker when it is representing the insurer in a transaction with an insurance producer;

(4) “Reconciled item” means an item subject to an invoice, account current, or account rendered that is undisputed, liquidated, and not subject to reasonable dispute; and

(5) “Surplus lines broker” shall have the meaning found in § 23-65-308.

(b) When the premium due for an insurance policy or endorsement to the policy becomes a reconciled item and the insurance producer fails to deliver to the insurer the premiums due for the insurance policy or endorsement within the time provided by the agreement between the insurance producer and the insurer, or within sixty (60) days if no agreement, the insurer shall demand in writing that within thirty (30) days after the date of the demand, the insurance producer shall:

(1) Cure the default; and

(2) Provide a sworn affidavit declaring:

(A) That the total of its available cash and cash equivalent assets exceeds the total of all premiums that are due all of its customers and any insurers with which it holds an appointment or has a contractual relationship;

(B) The insurance producer’s license number or other identification issued by the State Insurance Department; and

(C) Any other comments that describe the reason for the default or any reason that the default is disputed.

(c) The insurer shall provide a copy of the demand and any statements received from the insurance producer pursuant to subsection (b) of this section to the Insurance Commissioner as attachments to the report on which the insurance producer appears, as required by subsection (d) of this section.

(d) By the end of each month, the insurer shall furnish a report to the commissioner, on a form approved by the commissioner, the following



information with respect to each insurance producer who was mailed a demand pursuant to subsection (b) of this section in the prior month:

- (1) The name of the agent or agency;
  - (2) The amount of premiums that are in default;
  - (3) The date of the inception of the insurance policy or endorsement; and
  - (4) The date when the transaction became reconciled.
- (e) Failure of the insurance producer to comply with the reporting requirements of subdivision (b)(2) of this section shall constitute a Class A misdemeanor.

(f) This section does not create an affirmative defense to, or a limitation on, prosecutions brought under § 23-64-223.

**History.** Acts 2001, No. 1827, § 1; 2003, No. 1350, §§ 1, 2.

### SUBCHAPTER 3 — CONTINUING EDUCATION

#### SECTION.

- 23-64-301. Continuing education required.
- 23-64-302. Requirements for licensees — Exceptions.
- 23-64-303. Requirements for newly licensed agents or brokers.
- 23-64-304. Determination of course content and credit — Time extensions.

#### SECTION.

- 23-64-305. Programs of instruction.
- 23-64-306. Certification of courses completed — Filing fee.
- 23-64-307. Insurance Continuing Education Trust Fund.
- 23-64-308. [Transferred.]

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1 and 2 may not apply to this subchapter which was enacted subsequently.

**Effective Dates.** Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers’ compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 657, § 14: Mar. 16, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-se-

cond General Assembly that the present laws to license insurance representatives, laws on office facilities of non-resident adjusters, and laws to license surplus lines brokers, are possibly too costly, burdensome, or time-consuming; and need immediate attention to alleviate the burdens on commerce of the insurance business in Arkansas. This Act is designed to relieve those hardships and to ease the financial burdens for individuals doing insurance business in Arkansas; that in turn is designed to provide more efficient insurance services to the insurance buying public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is

vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: “It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1784, § 3: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current insurance market is volatile; that current insurance laws do not require insurance producers to obtain continuing education hours; that to protect consumers, insurance producers need to obtain continuing education hours that include at least (1) hour in ethics training; and that this act is immediately necessary to ensure that insurance producers are adequately informed of industry developments and to protect insurance purchasers in a volatile market. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2007, No. 684, § 10, provided: “Sections 1 through 9 of this act take effect January 1, 2008.”

Acts 2009, No. 726, § 31: January 1, 2010, by its own terms.

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### 23-64-301. Continuing education required.

(a)(1) Unless exempt under § 23-64-302, an insurance producer licensed in this state shall successfully complete and report the courses of instruction required by this section within the biennial period prescribed by rule of the Insurance Commissioner for the insurance producer to satisfy the continuing education requirements necessary to continue the insurance producer’s license.

(2) The exemptions in § 23-64-302(3) and (4) do not apply to an insurance producer licensed after July 1, 2003.

(b) An individual who holds a title insurance license shall complete the minimum number of hours of continuing education courses established by rule of the commissioner.

(c) The commissioner may promulgate rules containing the continuing education requirements for insurance producers licensed in this state as necessary for continued uniformity among the states.

(d) The commissioner may hire an independent contractor to administer all or part of this subchapter in a fair and impartial manner.

**History.** Acts 1989, No. 445, § 1; 1997, No. 1004, § 1; 2001, No. 1603, § 20; 2003, No. 1784, § 1; 2007, No. 684, § 4; 2009, No. 726, § 31; 2011, No. 760, § 7.

**A.C.R.C. Notes.** Acts 2001, No. 1603, § 20, also provided: “(b)(3) For purposes of implementation, those agents who were

to obtain educational hours before December 31, 1997, shall be able to credit those hours obtained for the December 31, 1997, requirement as the annual requirement of eight (8) hours by their birth dates.”

**Amendments.** The 2007 amendment added (b)(1)(C) and made related changes.

The 2009 amendment rewrote (a) and (b).

The 2011 amendment rewrote (b) and (c).

### **23-64-302. Requirements for licensees — Exceptions.**

The provisions of this subchapter shall not apply to:

(1) Those natural persons holding licenses for any kind or kinds of insurance for which an examination is not required by the laws of this state;

(2) Any limited or restricted license the Insurance Commissioner may exempt;

(3) Any natural person who is at least sixty (60) years of age;

(4) Any natural person who has held an active license as an agent, solicitor, consultant, or broker for a period of at least fifteen (15) consecutive years;

(5) The licensee as a firm, limited liability company, or corporation, but this exception does not apply to any individual or natural person unless already exempted;

(6) Nonresident producers;

(7) Licensed insurance consultants for life, accident and health, property, or casualty insurance or for other lines of insurance;

(8) Nonresident agents and brokers in the first full year of resident licensing following the year after a change in the state of domicile or residency to the State of Arkansas, but thereafter annually or otherwise in accordance with insurance continuing education laws and rules and regulations of the commissioner; and

(9) Any person called to active duty in any branch of the United States military services, including, but not limited to, the United States Coast Guard and reserves, during the entire period of active duty service.

**History.** Acts 1989, No. 445, § 1; 1993, No. 901, § 30; 1997, No. 1004, § 1; 1999, No. 657, § 8; 2001, No. 1603, § 21; 2003, No. 1784, § 2; 2005, No. 1697, § 5.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance

industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

### **23-64-303. Requirements for newly licensed agents or brokers.**

Newly licensed agents or brokers shall not be required to meet the requirements of this subchapter until the first annual period after the first renewal of their licenses on the birthdate of the licensee.



**History.** Acts 1989, No. 445, § 1; 1997, No. 1004, § 1.

**23-64-304. Determination of course content and credit — Time extensions.**

(a) Rules and regulations necessary and appropriate to implement and administer this subchapter shall be promulgated by the Insurance Commissioner.

(b) For good cause shown, the commissioner may grant an extension of time during which the educational requirements imposed by this subchapter may be completed, but the extension of time shall not exceed a period of one (1) calendar year.

(c) The number of hours for which credit shall be given for such courses, meetings, or programs of instruction shall be as determined by the commissioner.

(d) Educational requirements shall be obtained and reported annually to the commissioner on or before the birthdate of the licensee. Failure to report or obtain the mandated educational requirements along with the fee imposed in a timely manner shall result in the additional following fines:

(1) If within thirty (30) days after the due date, a fine of twenty-five dollars (\$25.00) shall be imposed automatically;

(2) If within sixty (60) days after the due date, a fine of fifty dollars (\$50.00) shall be imposed automatically;

(3) If within ninety (90) days after the due date, a fine of one hundred dollars (\$100) shall be imposed automatically;

(4)(A) If after ninety (90) days from the due date, the license shall become automatically suspended.

(B) Reinstatement of the license shall require payment of a fine of one hundred fifty dollars (\$150) if reinstated within one (1) year from the due date of the education; and

(5) If after one (1) year from the due date, reinstatement is not available. Should a license be desired, the licensee must again proceed to become licensed as if never having held a license in addition to obtaining the education due when the license was suspended and paying the fine of one hundred fifty dollars (\$150).

(e)(1) Any licensee fined under subsection (d) of this section may request that the commissioner seal the licensee's records regarding the fine.

(2) The underlying conduct of any licensee whose record has been sealed under this section shall be deemed as a matter of law to have never occurred, and the licensee may state that the conduct or fine never occurred.

**History.** Acts 1989, No. 445, § 1; 1997, No. 1004, § 1; 2003, No. 1203, § 9.

**23-64-305. Programs of instruction.**

(a) Subject to approval of the Insurance Commissioner, the courses or programs of instruction or parts thereof which shall be deemed to meet the commissioner's standards for continuing education required hereunder shall include, but not be limited to, the following:

- (1) American College Courses (CLU, ChFC);
- (2) Life Underwriters Training Council (LUTC);
- (3) Certified Insurance Counselor (CIC);
- (4) Chartered Property & Casualty Underwriter (CPCU);
- (5) Insurance Institute of America (IAA);
- (6) Certified Health Consultant (CHC);
- (7) Registered Health Underwriter (RHU);
- (8) An insurance-related course or program of instruction taught by an accredited college, university, or other educational institution in this state having a comprehensive course of instruction approved and certified by the commissioner; and

(9) A course or program of instruction developed or sponsored by any authorized insurer, recognized agents' association, or insurance trade association, including meetings dedicated to the instruction of agents' education concerning matters of insurance or insurance law.

(b) A person teaching any approved course or program of instruction shall be allowed credit for the same number of educational hours as would be granted a person taking and successfully completing the course, program, or meeting.

(c) For courses, meetings, or programs not personally attended, but taken by correspondence, a proctored written exam shall be required with proof of passing the correspondence course accompanied by an affidavit from the proctor in form and substance as may be prescribed by the commissioner before credit may be considered for educational hours for that correspondence course.

(d) Subject to approval by the commissioner, the active annual membership of the licensed agent or broker in local, regional, state, or national professional insurance organizations or associations may be approved for up to two (2) annual hours of instruction. These hours shall be credited upon timely filing with the commissioner or his or her designee appropriate written evidence acceptable to the commissioner of active membership in the organization or association.

**History.** Acts 1989, No. 445, § 1; 1997, No. 1004, § 1; 1999, No. 657, § 9.

**23-64-306. Certification of courses completed — Filing fee.**

(a) Every person subject to the provisions of this subchapter shall furnish, in a form satisfactory to the Insurance Commissioner, written certification as to the courses, meetings, or programs of instruction taken and successfully completed by such persons.

(b) A filing fee shall be paid by the person furnishing the certification in an amount determined by the commissioner to be sufficient to cover the administrative costs related to the handling of such certification.

(c) The commissioner shall determine the amount of the filing fee which shall not substantially exceed the cost of administering this subchapter.

**History.** Acts 1989, No. 445, § 1; 1997, No. 1004, § 1.

### **23-64-307. Insurance Continuing Education Trust Fund.**

(a) All funds received pursuant to the provisions of this subchapter shall be transmitted by the Insurance Commissioner to the Treasurer of State to the credit of an account or fund to be entitled "Insurance Continuing Education Trust Fund", which is hereby established.

(b) All expenditures disbursed pursuant to this subchapter shall be paid from funds appropriated from the Insurance Continuing Education Trust Fund by the General Assembly.

**History.** Acts 1989, No. 445, § 1; 1997, No. 1004, § 1.

**Publisher's Notes.** This section was formerly codified as § 23-64-308. Former § 23-64-307, concerning failure to comply

with subchapter and extension of time, was repealed by Acts 1997, No. 1004, § 1. The section was derived from Acts 1989, No. 445, § 1.

### **23-64-308. [Transferred.]**

**Publisher's Notes.** Former § 23-64-308 has been renumbered by Acts 1997, No. 1004 as § 23-64-307.

## **SUBCHAPTER 4 — MANAGING GENERAL AGENTS ACT**

#### **SECTION.**

23-64-401. Title.

23-64-402. Definitions.

23-64-403. License — Surety requirements.

23-64-404. Agency contracts — Provisions.

#### **SECTION.**

23-64-405. Reporting requirements.

23-64-406. Representative capacity — Examinations.

23-64-407. Penalties for violations.

23-64-408. Insurance Commissioner's regulatory authority.

**Effective Dates.** Acts 1993, No. 1094, § 5: Apr. 13, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the imme-

diately passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."



**23-64-401. Title.**

This subchapter may be cited as the “Managing General Agents Act”.

**History.** Acts 1993, No. 1094, § 1;  
1997, No. 1004, § 1.

**23-64-402. Definitions.**

(a) “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.

(b) “Insurer” means any person, firm, association, limited liability company, or corporation duly licensed in this state as an insurance company.

(c)(1) “Managing general agent” means any person, firm, association, limited liability company, or corporation who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates:

(A) Produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year; together with

(B) One (1) or more of the following activities related to the business produced:

(i) Adjusts or pays claims in excess of an amount determined by the commissioner; or

(ii) Negotiates reinsurance on behalf of the insurer.

(2) Notwithstanding subdivision (c)(1) of this section, the following persons shall not be considered as managing general agents for the purposes of this subchapter:

(A) An employee of the insurer;

(B) A United States manager of the United States branch of an alien insurer;

(C) An underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and whose compensation is not based on the volume of premiums written; or

(D) The attorney in fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(d) “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

**History.** Acts 1993, No. 1094, § 1;  
1997, No. 1004, § 1.

## CASE NOTES

**In General.**

An insurer's general managing agent bore the burden of proof on summary judgment that it was not liable for the bad faith actions of the insurer. *Moss v. Am. Alternative Ins. Corp.*, — F. Supp.2d —, 2006 U.S. Dist. LEXIS 80329 (Nov. 1, 2006).

**23-64-403. License — Surety requirements.**

(a) No person, firm, association, limited liability company, or corporation shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed managing general agent in this state.

(b) No person, firm, association, limited liability company, or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a managing general agent in this state pursuant to the provisions of this subchapter. The license may be a nonresident license.

(c) The Insurance Commissioner may require the managing general agent to post a bond in an amount acceptable to him or her for the protection of the insurer.

(d) The commissioner may require the managing general agent to maintain an errors and omissions policy.

(e) The commissioner shall not require a license under this subchapter for insurers acting in the capacity of a managing general agent or agency in this state for risks located in this state, nor for acting for a domestic insurer with respect to risks located outside this state, so long as those insurers hold a subsisting certificate of authority listing the same lines of insurance as it will transact as a managing general agent or agency in this state.

**History.** Acts 1993, No. 1094, § 1; 1997, No. 1004, § 1; 2001, No. 1604, § 43.

**23-64-404. Agency contracts — Provisions.**

No person, firm, association, limited liability company, or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of the responsibilities, and which contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;

(3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three (3) months' estimated claims payments and allocated loss adjustment expenses;

(4) Separate records of business written by the managing general agent will be maintained. The insurer shall have access and the right to copy all accounts and records related to its business in a form usable by the insurer, and the Insurance Commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner;

(5) The contract may not be assigned in whole or part by the managing general agent;

(6)(A) Appropriate underwriting guidelines, including:

- (i) The maximum annual premium volume;
- (ii) The basis of the rates to be charged;
- (iii) The types of risks which may be written;
- (iv) Maximum limits of liability;
- (v) Applicable exclusions;
- (vi) Territorial limitations;
- (vii) Policy cancellation provisions; and
- (viii) The maximum policy period.

(B) The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations of this state concerning the cancellation and nonrenewal of insurance policies;

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(A) All claims must be reported to the company in a timely manner;

(B) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six (6) months; or

(v) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less;

(C) All claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis; and

(D) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice



to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination;

(8) When electronic claims files are in existence, the contract must address the timely transmission of the data;

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until one (1) year after they are earned for property insurance business and five (5) years after they are earned on casualty business and not until the profits have been verified pursuant to § 23-64-405; and

(10) The managing general agent shall not:

(A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(B) Commit the insurer to participate in insurance or reinsurance syndicates;

(C) Appoint any agent without assuring that the agent is lawfully licensed to transact the type of insurance for which appointed;

(D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(E) Collect any payment from a reinsurer, or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(F) Permit its subagent to serve on the insurer's board of directors;

(G) Jointly employ an individual who is employed with the insurer;  
or

(H) Appoint a managing general subagent.

**History.** Acts 1993, No. 1094, § 1;  
1997, No. 1004, § 1.

### **23-64-405. Reporting requirements.**

(a) The insurer shall have on file an independent financial examination, in a form acceptable to the Insurance Commissioner, of each managing general agent with which it has done business.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the

adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(c) The insurer shall periodically, and not less often than semiannually, conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

(e)(1) Within thirty (30) days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the commissioner.

(2) Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(f)(1) An insurer shall review its books and records each quarter to determine if any agent has become, by operation of § 23-64-402(c), a managing general agent as defined in § 23-64-402(c).

(2) If the insurer determines that an agent has become a managing general agent pursuant to § 23-64-402(c), the insurer shall promptly notify the agent and the commissioner of such a determination, and the insurer and agent must fully comply with the provisions of this subchapter within thirty (30) days.

(g)(1) An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its managing general agents.

(2) This subsection does not apply to relationships governed by the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.

**History.** Acts 1993, No. 1094, § 1; substituted “the Insurance Holding Company Regulatory Act, § 23-63-501” for “§ 23-63-601” in (g)(2), and made a minor  
1997, No. 1004, § 1; 2001, No. 1566, § 12;  
2009, No. 726, § 32.

**Amendments.** The 2009 amendment stylistic change.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-64-406. Representative capacity — Examinations.

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

**History.** Acts 1993, No. 1094, § 1;  
1997, No. 1004, § 1.

## CASE NOTES

**In General.**

An insurer's general managing agent bore the burden of proof on summary judgment that it was not liable for the bad

faith actions of the insurer. *Moss v. Am. Alternative Ins. Corp.*, — F. Supp.2d —, 2006 U.S. Dist. LEXIS 80329 (Nov. 1, 2006).

**23-64-407. Penalties for violations.**

(a) If the Insurance Commissioner finds after a hearing conducted in accordance with § 23-61-301 et seq. that any person has violated any provision of this subchapter, the commissioner may order:

(1) For each separate violation, a penalty in an amount of two thousand dollars (\$2,000) or, if the commissioner has found willful misconduct or willful violation, ten thousand dollars (\$10,000);

(2) Revocation or suspension of the managing general agent's license; and

(3) The managing general agent to reimburse the insurer, the rehabilitator, or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this subchapter committed by the managing general agent.

(b) The decision, determination, or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.

(d) Nothing contained in this subchapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

**History.** Acts 1993, No. 1094, § 1; 1997, No. 1004, § 1.

**23-64-408. Insurance Commissioner's regulatory authority.**

The Insurance Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this subchapter.

**History.** Acts 1993, No. 1094, § 1; 1997, No. 1004, § 1.

**SUBCHAPTER 5 — PRODUCER LICENSING MODEL ACT**

## SECTION.

23-64-501. Title — Purpose — Scope.

23-64-502. Definitions.

23-64-503. License required.

23-64-504. Exceptions to licensing.

23-64-505. Application for examination.

## SECTION.

23-64-506. Application for license.

23-64-507. License.

23-64-508. Nonresident licensing.

23-64-509. Exemption from examination.

23-64-510. Assumed names.



## SECTION.

- 23-64-511. Temporary licensing.
- 23-64-512. License denial, nonrenewal,  
or revocation.
- 23-64-513. Commissions.
- 23-64-514. Appointments.
- 23-64-515. Notification to Insurance  
Commissioner of termina-  
tion.

## SECTION.

- 23-64-516. Reciprocity.
- 23-64-517. Reporting of actions.
- 23-64-518. Regulations.
- 23-64-519. Centralized producer licens-  
ing registry.
- 23-64-520. Compensation disclosure.

**Effective Dates.** Acts 2001, No. 580, § 29, provided: "Effective date. The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds that implementation of the act is not possible by July 1, 2002."

Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline in regard to the Arkansas Insurance Department's regulation of agents, brokers, surplus line brokers, and other applicants for individual and corporate licenses; and that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come

into compliance by the November 12, 2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## 23-64-501. Title — Purpose — Scope.

(a) This subchapter shall be known and may be cited as the "Producer Licensing Model Act".

(b) This subchapter governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology, and reduces costs associated with issuing and renewing insurance licenses.

(c) This subchapter does not apply to excess and surplus lines agents and brokers licensed pursuant to the Surplus Lines Insurance Law, § 23-65-301 et seq., except as provided in §§ 23-64-508 and 23-64-516(b).

**History.** Acts 2001, No. 580, § 1.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of      ssembly, Insurance Law, 24 U. Ark. Little  
Legislation, 2001 Arkansas General As-      Rock L. Rev. 577.

### 23-64-502. Definitions.

For purposes of this subchapter:

(1) “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

(2) “Home state” means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;

(3) “Insurance” means any of the lines of authority defined in §§ 23-62-101 — 23-62-108;

(4) “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance;

(5) “Insurer” means those entities defined in § 23-60-102;

(6) “License” means a document issued by this state’s Insurance Commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier;

(7) “Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance;

(8) “Limited line credit insurance producer” means a person who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;

(9) “Limited lines insurance” means those lines of insurance for crop hail insurance, mobile home physical damage insurance, prepaid legal insurance, and fire and marine insurance written in connection with credit transactions, or any other line of insurance that the commissioner deems necessary to recognize for the purposes of complying with § 23-64-508(e);

(10) “Limited lines producer” means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance;

(11) “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(12) “Person” means an individual or a business entity;

(13) “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(14) “Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

(15) “Terminate” means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance;

(16) “Uniform Business Entity Application” means the current version of the National Association of Insurance Commissioners’ Uniform Business Entity Application for resident and nonresident business entities; and

(17) “Uniform Application” means the current version of the National Association of Insurance Commissioners’ Uniform Application for resident and nonresident producer licensing.

**History.** Acts 2001, No. 580, § 1.

### **23-64-503. License required.**

A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this subchapter.

**History.** Acts 2001, No. 580, § 1.

### **23-64-504. Exceptions to licensing.**

(a) Nothing in this subchapter shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.

(b) A license as an insurance producer shall not be required of the following:



(1) An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and:

(A) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(B) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(C) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers when the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;

(2) A person who does not receive any commission and:

(A) Secures and furnishes information for the purpose of enrolling individuals under group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance;

(B) Issues certificates under group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, or otherwise assists in administering plans; or

(C) Performs administrative services related to mass marketed property and casualty insurance;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation, or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(6) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty

risks to an insured with risks located in more than one (1) state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission; or

(8) Employees of an insurer or of an insurance producer who respond to requests from existing policyholders on existing policies, provided that those employees are not directly compensated based on the volume of premiums that may result from these services and provided those employees do not sell, solicit, or negotiate insurance.

**History.** Acts 2001, No. 580, § 1.

### **23-64-505. Application for examination.**

(a) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to § 23-64-205. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the Insurance Commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in § 23-61-401 and any existing or future rule and regulation.

(c) Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in § 23-61-401 and any existing or future rule and regulation.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**History.** Acts 2001, No. 580, § 1.

### **23-64-506. Application for license.**

(a) A person applying for a resident insurance producer license shall make application to the Insurance Commissioner on the National Association of Insurance Commissioners' Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before

approving the application, the commissioner shall find that the individual:

- (1) Is at least eighteen (18) years of age;
- (2) Has not committed any act that is a ground for denial, suspension, or revocation set forth in § 23-64-512;
- (3) When required by the commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;
- (4) Has paid the fees set forth in § 23-61-401 and any existing or future rule and regulation; and
- (5) Has successfully passed the examinations for the lines of authority for which the person has applied.

(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the fees set forth in § 23-61-401 and any existing or future rule and regulation; and
- (2) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in an application and shall cause to be conducted an investigation of the applicant's:

- (1) Background;
- (2) Trustworthiness;
- (3) Personal and business reputation; and
- (4) Financial responsibility.

(d) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner.

(e)(1) To obtain or renew an insurance producer's license, a resident applicant or producer must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

(2) Qualifications for licensure under this section must continue in order to remain licensed.

(3) On a case-by-case basis, the commissioner may require documentation to verify qualification for licensure under this section.

**History.** Acts 2001, No. 580, § 1; 2003, No. 1203, § 10; 2005, No. 1697, § 6.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given

period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their



insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools

necessary to be an informed and educated consumer of insurance coverage.”

### **23-64-507. License.**

(a) Unless denied licensure pursuant to § 23-64-512, persons who have met the requirements of §§ 23-64-505 and 23-64-506 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one (1) or more of the following lines of authority:

(1) Life insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) Accident and health or sickness insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(3) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(5) Variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(6) Personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(7) Credit limited line credit insurance; or

(8) Any other line of insurance permitted under state laws or regulations.

(b) An insurance producer license shall remain in effect unless revoked or suspended:

(1) As long as the fee set forth in § 23-61-401 and any existing or future rule and regulation is paid and education requirements for resident individual producers are met by the due date; or

(2)(A) During any period of active duty in any branch of the United States military services, including, but not limited to, the United States Coast Guard and reserves.

(B) The requirements of subdivision (b)(1) of this section are waived during the period of active duty.

(c) An individual insurance producer who allows his or her license to lapse may reinstate the same license within twelve (12) months after the due date of the renewal fee without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

(d) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, for example, a long-term medical disability, may request a waiver of those procedures. The producer may also

request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(e) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the Insurance Commissioner deems necessary.

(f) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the commissioner of a change in legal name or address shall result in a penalty pursuant to § 23-64-216.

(g) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the National Association of Insurance Commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

**History.** Acts 2001, No. 580, § 1; 2005, No. 1697, § 7.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemina-

tion of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

### **23-64-508. Nonresident licensing.**

(a) Unless denied licensure pursuant to § 23-64-512, a nonresident person shall receive a nonresident producer license if:

(1) The person is currently licensed as a resident and in good standing in his or her home state;

(2) The person has submitted the proper request for licensure and has paid the fees required by § 23-61-401 and any existing or future rule and regulation;

(3) The person has submitted or transmitted to the Insurance Commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed National Association of Insurance Commissioners' Uniform Application; and

(4) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(b)(1) The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries.

(2) If at any time the nonresident producer has his or her home state producer license suspended, revoked, or terminated, the commissioner



may summarily suspend the nonresident producer's nonresident producer license.

(3) A suspension under this subsection shall be lifted as a matter of law upon receipt of sufficient evidence that the nonresident producer's home state license is active and the nonresident producer is in good standing.

(c) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days after the change of legal residence. No fee or license application is required.

(d) Notwithstanding any other provision of this subchapter, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to subsection (a) of this section. Except as to subsection (a) of this section, nothing in this section otherwise amends or supercedes any provision of the Surplus Lines Insurance Law, § 23-65-301 et seq.

(e)(1) Notwithstanding any other provision of this subchapter, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license, pursuant to subsection (a) of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

(2) For the purposes of this subsection, "limited line insurance" is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to § 23-64-507(a)(1)-(6).

**History.** Acts 2001, No. 580, § 1; 2011, No. 760, § 8.

**Amendments.** The 2011 amendment added (b)(2) and (b)(3).

### **23-64-509. Exemption from examination.**

(a) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days after the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and indicates that the producer is or was licensed in good standing for the line of authority requested.

(b) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety (90) days after establishing legal residence to become a resident licensee pursuant to § 23-64-506. No prelicensing education or examination shall be re-



quired of that person to obtain any line of authority previously held in the prior state except when the Insurance Commissioner determines otherwise by regulation.

**History.** Acts 2001, No. 580, § 1.

### **23-64-510. Assumed names.**

An insurance producer doing business under any name other than the producer's legal name is required to notify the Insurance Commissioner prior to using the assumed name.

**History.** Acts 2001, No. 580, § 1.

### **23-64-511. Temporary licensing.**

(a) The Insurance Commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty (180) days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

(1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business;

(2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

(3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States; or

(4) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license.

(b) The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

**History.** Acts 2001, No. 580, § 1.

**23-64-512. License denial, nonrenewal, or revocation.**

(a) The Insurance Commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with § 23-64-216 or any combination of actions for any one (1) or more of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(2) Violating any of the following that calls into question the insurance producer's fitness to hold a license:

(A) A law; or

(B) A regulation, subpoena, or order of:

(i) The commissioner;

(ii) Another state's insurance commissioner; or

(iii) A court of competent jurisdiction.

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility;

(9) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(11) Improperly using notes or any other reference material to complete an examination for an insurance license;

(12) Knowingly accepting insurance business from an individual who is not licensed;

(13) Failing to provide a written response after receipt of a written inquiry from the commissioner or his or her representative as to transactions under the license within thirty (30) days after receipt thereof unless the timely written response is knowingly waived in writing by the commissioner;

(14) Failing to comply with an administrative or court order imposing a child support obligation;

(15) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax;

(16) Refusing to be examined or to produce any accounts, records, or files for examination; or

(17) Failing to cooperate with the commissioner in an investigation when required by the commissioner.

(b) In the event that the action by the commissioner is to nonrenew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise in writing by mail or electronic mail the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand by mail or electronic mail upon the commissioner within thirty (30) days for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty (30) days and shall be held pursuant to § 23-64-217 and the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

(d) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, after a hearing a person may:

- (1) Be ordered to pay restitution under § 23-61-110; and
- (2) Be subject to a civil fine under § 23-64-216.

(e) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this subchapter and the Arkansas Insurance Code against any person who is under investigation for or charged with a violation of this subchapter or the Arkansas Insurance Code, even if the person's license or registration has been revoked, surrendered, or has lapsed by operation of law.

**History.** Acts 2001, No. 580, § 1; 2003, No. 1203, § 11; 2005, No. 506, § 31; 2005, No. 1697, § 8; 2011, No. 760, § 9.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in pur-

chasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2011 amendment rewrote (a)(2).

## 23-64-513. Commissions.

(a) An insurance company or insurance producer shall not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if



that person is required to be licensed under this subchapter and is not so licensed.

(b) A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this subchapter and is not so licensed.

(c) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this subchapter at the time of the sale, solicitation, or negotiation and was so licensed at that time.

(d) An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this state unless the payment would constitute:

(1) A rebate, in violation of § 23-66-206(10) or § 23-66-308;

(2) A violation of the Trade Practices Act, § 23-66-201 et seq., or a violation of miscellaneous trade practices under §§ 23-66-301 — 23-66-316; or

(3) A violation of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

**History.** Acts 2001, No. 580, § 1; 2003, No. 1203, § 12.

**U.S. Code.** The Gramm-Leach-Bliley Act referred to in this section is codified

primarily at 12 U.S.C. § 1811 et seq., 12 U.S.C. § 1843 et seq., 15 U.S.C. § 78c et seq., and 15 U.S.C. § 6701.

## 23-64-514. Appointments.

(a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(b) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the Insurance Commissioner, a notice of appointment within fifteen (15) days after the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

(c) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time not to exceed thirty (30) days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the insurer within five (5) days after the commissioner's determination.

(d) An insurer shall pay an appointment fee, in the amount and method of payment set forth in § 23-61-401 and any existing or future rule and regulation, for each insurance producer appointed by the insurer.

(e) An insurer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in § 23-61-401 and any existing or future rule and regulation.

**History.** Acts 2001, No. 580, § 1.

### **23-64-515. Notification to Insurance Commissioner of termination.**

(a) **TERMINATION FOR CAUSE.** An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the Insurance Commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in § 23-64-512 or the insurer has knowledge that the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in § 23-64-512. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) **TERMINATION WITHOUT CAUSE.** An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in § 23-64-512, shall notify the commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(c) **ONGOING NOTIFICATION REQUIREMENT.** The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (a) of this section had the insurer then known of its existence.

(d) **COPY OF NOTIFICATION TO BE PROVIDED TO PRODUCER.**

(1) Within fifteen (15) days after making the notification required by subsections (a)-(c) of this section, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in § 23-64-512, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty (30) days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall

become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (f) of this section.

(e) IMMUNITIES.

(1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (a) of this section was reported to the commissioner, provided that the propriety of any termination for cause under subsection (a) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(2) In any action brought against a person that may have immunity under subdivision (e)(1) of this section for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subdivision (e)(1) of this section does not apply because the person making the statement or providing the information did so with actual malice.

(3) Subdivision (e)(1) or subdivision (e)(2) of this section shall not abrogate or modify any existing statutory or common law privileges or immunities.

(f) CONFIDENTIALITY.

(1) Any documents, materials, or other information in the control or possession of the State Insurance Department that is furnished by an insurer, producer, or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the Insurance Commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (f)(1) of this section.



(3) In order to assist in the performance of the commissioner's duties under this subchapter, the commissioner:

(A) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision (f)(1) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(B) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(C) May enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (f)(3) of this section.

(5) Nothing in this subchapter shall prohibit the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries of the National Association of Insurance Commissioners.

(6) The commissioner shall release information required by § 23-61-103.

(g) **PENALTIES FOR FAILING TO REPORT.** An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with the Arkansas Insurance Code.

**History.** Acts 2001, No. 580, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**23-64-516. Reciprocity.**

(a) The Insurance Commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by § 23-64-508, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(b) A nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

**History.** Acts 2001, No. 580, § 1.

**23-64-517. Reporting of actions.**

(a)(1) A producer shall report to the Insurance Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days after the final disposition of the matter.

(2) The report shall include a copy of the order, consent order, or other relevant legal documents.

(b)(1) Within thirty (30) days after the producer enters a plea with the court, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction.

(2) The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

**History.** Acts 2001, No. 580, § 1; 2007, No. 330, § 1.

**Amendments.** The 2007 amendment added the (a)(1) and (a)(2) designations; added the (b)(1) and (b)(2) designations;

substituted "the producer enters a plea with the court" for "the initial pretrial hearing date" in (b)(1); and made stylistic changes.

**23-64-518. Regulations.**

The Insurance Commissioner may, in accordance with § 23-61-108, promulgate reasonable regulations as are necessary or proper to carry out the purposes of this subchapter.

**History.** Acts 2001, No. 580, § 1.

**23-64-519. Centralized producer licensing registry.**

(a) The Insurance Commissioner may participate, in whole or in part, with the National Association of Insurance Commissioners, or any of its affiliates or subsidiaries, in a centralized producer license registry where insurance producer licenses and appointments may be centrally or simultaneously effected for all states that require an insurance

producer license and participate in such a centralized producer license registry.

(b) If the commissioner finds that participation in such a centralized producer license registry is in the public interest, the commissioner may adopt by rule any uniform standards and procedures as are necessary to participate in the registry. This includes the central collection of all fees for licenses or appointments that are processed through the registry.

**History.** Acts 2001, No. 580, § 1.

### **23-64-520. Compensation disclosure.**

(a) As used in this section:

(1) “Affiliate” means a person that controls, is controlled by, or is under common control with a producer;

(2)(A) “Compensation from an insurer or other third party” means payments, commissions, fees, overrides, bonuses, contingent commissions, loans, stock options, or any other form of valuable consideration, whether or not payable pursuant to a written agreement.

(B) Awards, gifts, and prizes shall be considered “compensation from an insurer or other third party” if the award, gift, or prize is directly tied to the producer’s performance; and

(3) “Compensation from the customer” shall not include any fee or similar expense under § 23-66-310 or any fee or amount collected by or paid to the producer that does not exceed an amount established by the Insurance Commissioner.

(b)(1) Before the placement of insurance business, all insurance producers shall disclose:

(A) Whether the producer or its affiliate represents the customer or the insurer; and

(B) The source or sources of the producer’s or affiliate’s compensation for the placement.

(2) If the producer represents the insurer, the producer shall disclose to the customer that the producer provides services to the customer on behalf of the insurer.

(3) If the producer receives compensation from the customer for a placement of insurance or acts as a broker as defined by § 23-64-102, the producer shall disclose:

(A) The source or sources of the producer’s or affiliate’s compensation for the placement; and

(B) Whether the producer or its affiliate will receive compensation for the placement from the insurer or other third party based upon volume, profitability, or other factors, and if the customer requests, the producer shall provide a reasonable estimate of the amount of compensation.

(c) A person shall not be considered a “customer” for purposes of this section if the person is merely:

(1) A participant or beneficiary of an employee benefit plan; or



- (2) Covered by a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.
- (d) This section shall not apply to:
- (1) A person licensed as a producer who acts only as an intermediary between an insurer and the customer’s producer, including, but not limited to, a managing general agent, a sales manager, or wholesale broker when acting only as an intermediary;
- (2) A reinsurance intermediary;
- (3) Any placement involving a residual market mechanism;
- (4) Renewals, unless the information previously disclosed under subsection (b) of this section has substantially changed; or
- (5) Any placement of credit life or credit disability insurance.

**History.** Acts 2005, No. 1697, § 9.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: “Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage.”

CHAPTER 65

UNAUTHORIZED INSURERS AND SURPLUS LINES

SUBCHAPTER.

1. GENERAL PROVISIONS.

2. UNAUTHORIZED INSURERS PROCESS ACT.

3. SURPLUS LINES INSURANCE LAW.

4. MULTISTATE AGREEMENTS OR COMPACTS.

RESEARCH REFERENCES

Am. Jur. 43 Am. Jur. 2d, Ins., § 37 et seq.

C.J.S. 44 C.J.S., Ins., § 47.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.	SECTION.
23-65-101. Unauthorized insurance transactions prohibited.	23-65-103. Report and tax of independently procured coverages.
23-65-102. Suits by unauthorized insurers prohibited.	23-65-104. Records produced on order.
	23-65-105. [Repealed.]

**Effective Dates.** Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 516, § 7: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unauthorized insurance products are a danger to Arkansas insurance consumers; that unauthorized persons and entities have collected premiums from Arkansas insurance consumers but have not paid claims; that the sale of unauthorized insurance products has resulted in hundreds of thousands of dollars in unpaid medical bills in Arkansas; that Arkansas insurance consumers should be able to rely on their insurance producers to sell them products authorized to be sold in Arkansas; and that unauthorized products continue to be sold in Arkansas; and that these changes are immediately necessary to enable the State Insurance Department to take immediate action against unauthorized persons and entities and to require insurance producers to ensure that the products they sell are authorized. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall become effective on: (1) The date of its approval by the Governor; (2) However, if the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2011, No. 1055, § 4: Apr. 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Insurance Commissioner is not able to enter into agreements with other jurisdictions to regulate taxes on surplus lines insurers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

**23-65-101. Unauthorized insurance transactions prohibited.**

(a)(1) No person or entity in this state shall act as agent or broker for or otherwise represent or aid any insurer, health maintenance organization, multiple employer welfare arrangement, multiple employer trust, association, or any other person or entity in the solicitation, negotiation, or effectuation of insurance, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state if that person or entity is not authorized or licensed by the State Insurance Department for those purposes.

(2)(A) No person or entity shall act as a producer, adjuster, or consultant without first obtaining appropriate licensure or registration as required by the insurance laws of this state for the transaction of insurance with respect to subjects of insurance or self-insurance resident, located, or to be performed in this state.

(B) No person or entity shall act as a multiple employer trust or multiple employer welfare arrangement without first obtaining appropriate registration or licensing as required by § 23-92-101.

(C) No person or entity shall act as a third-party administrator for a multiple employer trust, multiple employer welfare arrangement, collectively bargained trust, self-insurance plan, or any other plan providing accident and health insurance benefits to the citizens of this state without first obtaining appropriate registration as required by § 23-92-201 et seq.

(D) Any producer who knows or has reason to know that a health plan is not licensed in accordance with the Arkansas Insurance Code shall immediately report the health plan to the department.

(b)(1)(A) The Insurance Commissioner may summarily order a person or entity to cease and desist from an act or practice when the commissioner has reason to believe that the person or entity has not complied with the requirements of this section or any other provision of the Arkansas Insurance Code.

(B) Upon the entry of the cease and desist order, the commissioner shall promptly notify the person or entity named:

(i) That the order has been entered;

(ii) The reasons for the order; and

(iii) Of the person's or entity's right to a hearing on the order.

(2)(A) A hearing shall be held on the written request of the person or entity named in the cease and desist order if the commissioner receives the request within thirty (30) days of the date of the entry of the order or if otherwise ordered by the commissioner.

(B) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner.

(C) If a hearing is requested or ordered and after notice of an opportunity for hearing, the commissioner may affirm, modify, or vacate the cease and desist order.



(D) The person or entity named in the cease and desist order shall have the burden of proving:

(i) That the actions, methods, or practices described in the order are not in violation of the Arkansas Insurance Code; and

(ii) The grounds upon which the commissioner should modify or vacate an order issued under this section.

(3)(A) After issuance of an order under subdivision (b)(1)(B) of this section, the commissioner may apply to Pulaski County Circuit Court to temporarily or permanently enjoin the act or practice and to enforce compliance with the Arkansas Insurance Code or any rule or order under the Arkansas Insurance Code.

(B) However, the commissioner may apply directly to Pulaski County Circuit Court for a temporary or permanent injunction under subdivision (b)(3)(A) of this section.

(C) Upon a proper showing, the court shall enter a permanent or temporary injunction, restraining order, or writ of mandamus.

(D) The commissioner shall not be required to post a bond.

(c) The commissioner may also seek and the appropriate court may grant any other ancillary relief which may be in the public interest, including the appointment of a receiver, temporary receiver, conservator, or declaratory judgment, obtaining an accounting, disgorgement, assessment of a fine, or other relief as may be appropriate in the public interest.

(d) This section does not prohibit or restrict the informal disposition of a proceeding by stipulation, settlement, consent, or default.

(e) Any insurance producer licensed in this state, or any other person, who knowingly sells, solicits, or negotiates a product of an unauthorized person or entity in violation of this section or who knowingly represents or aids an unauthorized person or entity in violation of this section shall be guilty of a Class D felony.

(f) Any insurance producer licensed in this state, or any other person, who sells, solicits, or negotiates a product of an unauthorized person or entity in violation of this section or who represents or aids an unauthorized person or entity in violation of this section may be personally liable for all damages caused by the unauthorized person or entity, including claims unpaid by the unauthorized person or entity.

(g) Any person or entity who violates or otherwise fails to comply with a cease and desist order of the commissioner under this section while that order is in effect may be subject, at the discretion of the commissioner, to any one (1) or more of the following:

(1) A monetary penalty of not more than ten thousand dollars (\$10,000);

(2) Suspension or revocation of the person's or entity's license or registration; and

(3) Upon the commissioner's petition filed in Pulaski County Circuit Court and upon good cause shown, that court may order injunctive relief.

(h) The following shall be applicable to hearings held, orders issued, and penalties levied by the commissioner under this section:

- (1) The provisions of § 23-61-301, as to witnesses and evidence;
- (2) The provisions of §§ 23-61-302 and 23-66-214, as to immunity from prosecution;
- (3) The provisions of §§ 23-61-303 — 23-61-305, as to hearings;
- (4) The provisions of §§ 23-61-306 and 23-61-307, as to orders on hearings and appeals of orders;
- (5) The provisions of § 23-66-210(a)(1), as to monetary penalties; and
- (6) The provisions of § 23-66-212, as to judicial review of cease and desist orders.

(i) The commissioner may promulgate such reasonable rules and regulations as are necessary to carry out the provisions of this section.

(j)(1) The commissioner shall have the power to examine and investigate the affairs of every person or entity suspected of engaging in activities which are prohibited by this section or by any other provision of the Arkansas Insurance Code.

(2) All licensees of the commissioner shall assist the commissioner in examinations and investigations conducted under this section.

(k) The powers vested in the commissioner by this section shall be additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law or other provisions of the Arkansas Insurance Code with respect to activities that are prohibited by this section or the Arkansas Insurance Code.

(l) This section shall not apply to:

(1) Acceptance of service of process by the commissioner under § 23-65-203; and

(2) Surplus lines insurance and other transactions as to which a certificate of authority is not required of an insurer, as stated in § 23-63-201.

**History.** Acts 1959, No. 148, § 181; A.S.A. 1947, § 66-2901; Acts 1987, No. 400, § 1; 1991, No. 1123, § 2; 1993, No. 901, § 32; 2001, No. 1603, § 22; 2003, No. 516, § 5; 2005, No. 1697, §§ 10, 11.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in pur-

chasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**U.S. Code.** The Employee Retirement Income Security Act of 1974, referred to in this section, is primarily codified as 26 U.S.C. § 401 et seq. and 29 U.S.C. § 1001 et seq.

**CASE NOTES****Summary Judgment Proper.**

In a case arising from a performance bond in which a church moved for summary judgment on its claim that an insurance company and various individuals had violated this section, it was undisputed that the insurance company and one individual were not authorized or licensed by the Arkansas Insurance Department to conduct business and sell

insurance in the State of Arkansas. Nor was there any genuine issue of material fact as to whether two other individuals assisted the first individual and the insurance company in the very activities that constituted violations of subsection (a) of this section. *Old St. Paul Missionary Baptist Church v. First Nation Ins. Group*, 707 F. Supp. 2d 811 (E.D. Ark. 2010).

**23-65-102. Suits by unauthorized insurers prohibited.**

As to transactions not permitted under § 23-63-201, no unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action, or proceeding in this state to enforce any right, claim, or demand arising out of any insurance transaction in this state until the insurer has obtained a certificate of authority to transact such insurance in this state.

**History.** Acts 1959, No. 148, § 182; A.S.A. 1947, § 66-2902.

**23-65-103. Report and tax of independently procured coverages.**

(a)(1) An insured or self-insured whose home state is this state who directly procures, causes to be procured, continues, or renews insurance in an unauthorized insurer, including surplus lines insurance when procured without use of a surplus lines broker pursuant to the insurance laws of this state, within thirty (30) days after the date the insurance was procured, continued, or renewed, shall file a written report with the Insurance Commissioner on forms designated by the commissioner and furnished to the insured upon request.

(2) The report shall show:

- (A) The name and address of each named insured;
- (B) The name and address of the insurer;
- (C) The subject of the insurance;
- (D) A general description of the coverage;
- (E) The amount of premium currently charged; and
- (F) Such additional pertinent information as is reasonably requested by the commissioner.

(3) If the insurance also covers subjects of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for the insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(b) Insurance in an unauthorized insurer procured through negotiations or an application, in whole or in part, occurring or made within this state, or for which premiums are remitted directly or indirectly



from within this state, is insurance procured, continued, or renewed in this state within the intent of subsection (a) of this section.

(c)(1) For the general support of the government of this state there is levied upon the obligation, chose in action, right represented by the premium charged, or payable for the insurance a tax at the rate of two percent (2%) of the net direct amount of the premium.

(2) The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for the insurance, and within thirty (30) days after the insurance was so procured, continued, or renewed, and coincidentally with the filing of the report with the commissioner required by subsection (a) of this section, the insured shall pay the amount of the tax to the Treasurer of State through the commissioner.

(d) If the insured fails to withhold from the premium the amount of tax levied under this section, the insured is liable for the amount and shall pay the amount to the commissioner within the time stated in subsection (c) of this section.

(e) If the tax imposed under this section is delinquent, it shall bear interest at the rate of six percent (6%) per annum, compounded annually.

(f) The tax is collectible from the insured by civil action brought by the commissioner.

(g) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify § 23-65-101, § 23-65-102, or any other provision of the insurance laws of this state.

(h) This section does not apply to life or accident and health insurance.

(i)(1) The tax specified in subsection (c) of this section is not due and payable to this state if the unlicensed or unauthorized insurer reports and pays premium tax to this state under § 26-57-603 et seq., or other applicable premium tax laws for these independently procured coverages.

(2) Upon receipt of a duplicate payment of tax from the insured and the unlicensed or unauthorized insurer, this state shall refund to the insured the amount of the duplicate payment.

**History.** Acts 1959, No. 148, § 206; A.S.A. 1947, § 66-2926; Acts 1991, No. 1123, § 4; 2001, No. 1555, § 1; 2011, No. 1055, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2011 amendment, in (a)(1), inserted "whose home state is

this state," deleted "in this state" preceding "directly procures," deleted "upon a subject of insurance resident, located, or to be performed within this state" following "in an unauthorized insurer," and substituted "the insurance laws" for "the surplus lines laws"; in (b), deleted "or from within" following "made within" and deleted "in whole or in part" following "premiums"; and rewrote (g).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

**23-65-104. Records produced on order.**

(a)(1) Every person as to whom insurance is placed with an unauthorized insurer, upon the Insurance Commissioner's order, shall produce for the commissioner's examination all policies and other documents evidencing the insurance and shall disclose to the commissioner the amount of gross premiums paid or agreed to be paid for the insurance.

(2) For each refusal to obey the order, the person shall be liable to a fine of not more than one hundred dollars (\$100) for each day of disobedience.

(b) This section does not apply to life insurance and accident and health insurance.

**History.** Acts 1959, No. 148, § 207; A.S.A. 1947, § 66-2927; Acts 2001, No. 1555, § 2; 2001, No. 1603, § 23.

**23-65-105. [Repealed.]**

**Publisher's Notes.** This section, concerning acting as or aiding an unauthorized insurer and cease and desist orders,

was repealed by Acts 1991, No. 1123, § 3. The section was derived from Acts 1987, No. 400, § 1.

**SUBCHAPTER 2 — UNAUTHORIZED INSURERS PROCESS ACT**

## SECTION.

23-65-201. Title — Interpretation.

23-65-202. Commissioner process agent.

23-65-203. Service of process.

23-65-204. Exemptions from service-of-process provisions.

## SECTION.

23-65-205. Defense of action by unauthorized insurer — Damages and attorney's fees.

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**CASE NOTES****Applicability.**

Service against the organized labor benefit trust fund could be properly obtained against such fund under this subchapter. *Bost v. Masters*, 235 Ark. 393, 361 S.W.2d 272 (1962).

**Cited:** *United Equitable Ins. Co. v. Karber*, 243 Ark. 631, 421 S.W.2d 338 (1967).

**23-65-201. Title — Interpretation.**

(a) This subchapter constitutes and may be cited as the “Unauthorized Insurers Process Act”.

(b) This subchapter shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

**History.** Acts 1959, No. 148, § 183;  
A.S.A. 1947, § 66-2903.

**23-65-202. Commissioner process agent.**

Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer, or the performance within this state of any other service or transaction connected with such insurance by or on behalf of the insurer, shall be deemed to constitute an appointment by the insurer of the Insurance Commissioner and his or her successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against the insurer arising out of any such contract or transaction; and shall be deemed to signify the insurer’s agreement that any such service of process shall have the same legal effect and validity as personal service of process upon it in this state.

**History.** Acts 1959, No. 148, § 184;  
A.S.A. 1947, § 66-2904.

**CASE NOTES****Jurisdiction.**

Substituted service of summons was held unauthorized, invalid and ineffective as to jurisdiction over defendant. *American Farmers Ins. Co. v. Thomason*, 217 Ark. 705, 234 S.W.2d 37 (1950) (decision under prior law).

In order for service of summons upon the Arkansas State Insurance Commis-

sioner to confer jurisdiction over the person of the defendant, it must appear that the defendant is an insurer, and that it has issued or delivered a policy or contract of insurance to the plaintiff, who must be a citizen or resident of Arkansas. *Atex Mfg. Co. v. Lloyd’s of London*, 139 F. Supp. 314 (W.D. Ark. 1955) (decision under prior law).

**23-65-203. Service of process.**

(a) Service of process upon any such insurer pursuant to § 23-65-202 shall be made by delivering to and leaving with the Insurance Commissioner or some person in apparent charge of his or her office two (2) copies thereof and the payment to him or her of such fees as may be prescribed by law. The commissioner shall forthwith mail by registered mail one (1) of the copies of such process to the defendant at its principal place of business last known to the commissioner, and shall keep a record of all process so served upon him or her. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten (10) days thereafter by registered mail by the plaintiff’s attorney to the defendant at its last known principal



place of business, and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(b) Service of process in any such action, suit, or proceeding shall in addition to the manner provided in subsection (a) of this section be valid if served upon any person within this state, who in this state on behalf of the insurer is:

(1) Soliciting insurance;

(2) Making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or

(3) Collecting or receiving any premium for insurance and a copy of the process is sent within ten (10) days thereafter by registered mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(c) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(d) Nothing in this section contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

**History.** Acts 1959, No. 148, § 185;  
A.S.A. 1947, § 66-2905.

## CASE NOTES

### ANALYSIS

Jurisdiction.  
Waiver.

#### **Jurisdiction.**

The court acquired no jurisdiction over the insurance fund by virtue of the service obtained on the officers of union local, since service was not properly obtained by compliance with subdivision (2)(c) of this section. *Bost v. Masters*, 235 Ark. 393, 361 S.W.2d 272 (1962).

### **Waiver.**

A letter from a firm of attorneys to the Insurance Commissioner acknowledging defendant's receipt of the summons and stating that defendant would either dispose of the matter with opposing counsel or retain local counsel to handle the case did not constitute defendant's waiver of plaintiff's failure to file an affidavit of compliance with this section in the absence of a showing of record that such attorneys were authorized to represent the defendant. *United Equitable Ins. Co.*

v. Karber, 243 Ark. 631, 421 S.W.2d 338 (1967). Hickman, 256 Ark. 308, 506 S.W.2d 823 (1974).

**Cited:** William Penn Fraternal Ass'n v.

### **23-65-204. Exemptions from service-of-process provisions.**

Sections 23-65-202, 23-65-203, and 23-65-205 shall not apply to surplus line insurance lawfully effectuated under this chapter, or to reinsurance, nor to any action or proceeding against an unauthorized insurer arising out of:

- (1) Wet marine and foreign trade insurance;
- (2) Insurance on subjects located, resident, or to be performed wholly outside this state or on vehicles or aircraft owned and principally garaged outside this state;
- (3) Insurance on property or operations of railroads engaged in interstate commerce; or
- (4) Insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, when the policy or contract contains a provision designating the Insurance Commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy, or when the insurer enters a general appearance in any such action.

**History.** Acts 1959, No. 148, § 186; A.S.A. 1947, § 66-2906.

### **23-65-205. Defense of action by unauthorized insurer — Damages and attorney's fees.**

(a) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under §§ 23-65-202 and 23-65-203, the insurer shall:

- (1) Procure a certificate of authority to transact insurance in this state; or
- (2) Deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with the clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such an action. The court may in its discretion make an order dispensing with the deposit or bond when the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such an action or proceeding and that the insurer will pay any final judgment entered therein without requiring suit to be brought on the judgment in the state where such funds or securities are located.

(b) The court in any action or proceeding in which service is made in the manner provided in § 23-65-203 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) of this section, and to defend the action.

(c) Nothing in subsection (a) of this section is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in § 23-65-203 hereof on the ground either:

(1) That such unauthorized insurer has not done any of the acts enumerated in § 23-65-202; or

(2) That the person on whom service was made pursuant to § 23-65-203(a) was not doing any of the acts therein enumerated.

(d) Any such insurer shall be subject to the provisions of § 23-79-208.

**History.** Acts 1959, No. 148, § 187; A.S.A. 1947, § 66-2907.

### CASE NOTES

#### Bond.

The failure of a defendant insurance company to qualify to do business in the state and file a bond as required by subsection (1) of this section did not preclude

such defendant, appearing specially, to file a motion to quash the summons because of plaintiff's failure to comply with § 23-65-203. *United Equitable Ins. Co. v. Karber*, 243 Ark. 631, 421 S.W.2d 338 (1967).

### SUBCHAPTER 3 — SURPLUS LINES INSURANCE LAW

#### SECTION.

- 23-65-301. Title.
- 23-65-302. Exceptions.
- 23-65-303. Insurer not admitted.
- 23-65-304. Definitions.
- 23-65-305. Conditions of procurement.
- 23-65-306. Brokers' affidavits.
- 23-65-307. Endorsement of contract.
- 23-65-308. Licensing of surplus lines broker.
- 23-65-309. Acceptance of business from agents by surplus lines brokers.
- 23-65-310. Surplus lines in solvent insurers.
- 23-65-311. Evidence of insurance — Changes.

#### SECTION.

- 23-65-312. Liability of insurer as to losses and unearned premiums.
- 23-65-313. Records of brokers.
- 23-65-314. Quarterly statement.
- 23-65-315. Tax on brokers.
- 23-65-316. Penalty for failure to file quarterly statement or remit tax.
- 23-65-317. Revocation of broker's license.
- 23-65-318. Action against insurer — Service of process.
- 23-65-319. Withdrawal of approval.
- 23-65-320. Domestic surplus lines insurers.

**Effective Dates.** Acts 1961, No. 466, § 13: Mar. 16, 1961. Emergency clause provided: "It has been found, and is hereby declared, that the use of the 1958 mortality tables authorized under this

act, which tables take account of the improvement in the life expectancy of the American people since the 1941 table was developed, will greatly reduce the need for deficiency reserves required under cur-



rent tables and will result in keeping down the cost of life insurance; and that since use of the 1958 mortality tables has already been approved in 31 states and will probably be approved by the remaining states during their current or next legislative session, prompt enactment of this Act is desirable so that policies may be issued on a uniform basis in all such states. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its passage and approval."

Acts 1973, No. 66, § 12: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 789, § 10: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety,

shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 118, § 6: Feb. 15, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the applicability of the common law and statutory law of this state relative to interpretation of insurance contracts and penalties that may be enforced against insureds be clearly made applicable to surplus lines insurers. Further, while it is crucially important to the state that there be an active "surplus lines" insurance market, there have been many occasions when insureds whose risks must be placed in this market do not recognize that the coverages are in many

instances less favorable than coverages available in the admitted market; and, although there are instances where the coverage may be more favorable, it is important, nonetheless, that insureds be made to recognize these distinctions. Further, the present law does not require a meaningful disclosure in this regard, and the foregoing changes are necessary to both clarify and change the law and should go into effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2011, No. 332, § 2: Mar. 18, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that to improve the efficiency of the surplus lines insurance system when considered appropriate by the Insurance Commissioner, a licensure procedure for domestic surplus lines insurers is required, and that this act is immediately necessary because it will assist in documenting who is authorized to participate in the surplus lines insurance system. Therefore, an emergency is de-

clared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1055, § 4: Apr. 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Insurance Commissioner is not able to enter into agreements with other jurisdictions to regulate taxes on surplus lines insurers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

**Am. Jur.** 43 Am. Jur. 2d, Ins., §§ 48, 50.

**C.J.S.** 44 C.J.S., Ins., § 85.

## CASE NOTES

### Construction.

The statutory scheme for surplus lines insurance is based upon the premise that Arkansas insurance brokers at times will be required to look to foreign or alien unauthorized insurers for surplus lines insurance. *Arkansas-Oklahoma Gas Corp. v. Lukis Stewart Price Forbes & Co.*, 306 Ark. 425, 816 S.W.2d 571 (1991).

It is manifest that the statutory scheme

for surplus lines insurance is designed to regulate the registered broker and to authorize the broker, by his certificate, to advise the insured of the names, addresses, and proportion of the risk assumed by each insurer. *Arkansas-Oklahoma Gas Corp. v. Lukis Stewart Price Forbes & Co.*, 306 Ark. 425, 816 S.W.2d 571 (1991).

## 23-65-301. Title.

This subchapter shall be known and may be cited as the "Surplus Lines Insurance Law".



**History.** Acts 1959, No. 148, § 188; substituted “shall be known and may be cited” for “constitutes and may be referred to.”  
A.S.A. 1947, § 66-2908; Acts 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment

### 23-65-302. Exceptions.

This subchapter shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

- (1) Wet marine and foreign trade insurance;
- (2) Insurance on subjects that are:
  - (A) Located, resident, or to be performed outside this state; or
  - (B) On vehicles or aircraft principally garaged outside this state;
- (3) Insurance on property or operation of railroads engaged in interstate commerce; and
- (4) Insurance of aircraft:
  - (A) Owned or operated by manufacturers of aircraft;
  - (B) Operated in scheduled interstate flight;
  - (C) Cargo; or
  - (D) Against liability, other than workers’ compensation and employer’s liability, arising out of the ownership, maintenance, or use of the aircraft.

**History.** Acts 1959, No. 148, § 205; anced with unauthorized insurers” following  
A.S.A. 1947, § 66-2925; Acts 2011, No. 1055, § 2. ing “This subchapter” in the introductory language; deleted “owned and” following “aircraft” in (1)(B); and subdivided (2) and (4).

**Amendments.** The 2011 amendment deleted “controlling the placing of insur-

### 23-65-303. Insurer not admitted.

(a) The permission granted in this law to place any insurance in a nonadmitted insurer shall not be deemed or construed to authorize that insurer to otherwise transact an insurance business in this state. Further, this limited permission shall not be deemed or construed so as to exempt nonadmitted insurers from the principles of the common law of insurance or from the same statutory and common law penalties that may attach in favor of insureds in the event of disputes or litigation between insureds and admitted insurers.

(b) A contract of insurance carried out by an unauthorized insurer in violation of this subchapter is voidable at the instance of the insurer.

**History.** Acts 1959, No. 148, § 193; **Amendments.** The 2011 amendment  
A.S.A. 1947, § 66-2913; Acts 1993, No. added (b).  
118, § 1; 2011, No. 1055, § 2.

### 23-65-304. Definitions.

As used in this subchapter:

- (1) “Affiliated group” means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;



(2) "Alien insurer" means an insurance company incorporated or formed under the laws of a country other than the United States;

(3) "Authorized insurer" means an insurance company qualified and licensed to transact business under Arkansas Code Title 23, Subtitle 3;

(4) "Control" means:

(A) To own, control, or have the power of an entity directly, indirectly, or acting through one (1) or more other persons to vote twenty-five percent (25%) or more of any class of voting securities of another entity; or

(B) To direct by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

(5)(A) "Exempt commercial purchaser" means a person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i)(a) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(b) A qualified risk manager with respect to a policyholder of commercial insurance means a person who meets the definition of qualified risk manager in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve (12) months; and

(iii) The person meets at least one (1) of the following criteria:

(a) The person possesses a net worth in excess of twenty million dollars (\$20,000,000), as the amount is adjusted under subdivision (5)(B) of this section;

(b) The person generates annual revenue in excess of fifty million dollars (\$50,000,000), as the amount is adjusted under subdivision (5)(B) of this section;

(c) The person employs more than five hundred (500) full-time or full-time-equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate;

(d) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), as the amount is adjusted under subdivision (5)(B) of this section; or

(e) The person is a municipal corporation with a population in excess of fifty thousand (50,000) inhabitants.

(B) Beginning on January 1, 2015, and one (1) time every five (5) years thereafter, the Insurance Commissioner shall by rule adjust the amounts in subdivisions (5)(A)(iii)(a) and (b) and (5)(A)(iii)(d) of this section to reflect the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period immediately preceding January 1 of the year of adjustment;

(6)(A) “Home state” means, except as provided in subdivision (6)(B) of this section, with respect to an insured:

(i)(a) The state in which an insured maintains its principal place of business or the state that is an individual’s principal residence.

(b) As used in subdivision (6)(A)(i)(a) of this section, “principal place of business” means the state in which the insured maintains its headquarters and where the insured’s high-level officers direct, control, and coordinate the business activities of the insured; or

(ii) If one hundred percent (100%) of the insured risk is located out-of-state as referred to in subdivision (6)(A)(i) of this section, the state to which the greatest percentage of the insured’s taxable premium for the insurance contract is allocated.

(B) If more than one (1) insured from an affiliated group are named insureds on a single nonadmitted insurance contract, “home state” means the home state of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract as determined under subdivision (6)(A) of this section;

(7) “Nonadmitted insurance” or “surplus lines insurance” means property and casualty insurance policies permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept the insurance;

(8) “Premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for the insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance;

(9) “Qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203, and the following requirements:

(A) The person is an employee of or third-party consultant retained by the commercial policyholder;

(B) The person provides skilled services in loss prevention, loss reduction, risk and insurance coverage analysis, or purchase of insurance; and

(C) The person has:

(i) A bachelor’s degree or higher from an accredited college or university in:

(a) Risk management;

(b) Business administration;

(c) Finance;

(d) Economics; or

(e) Any other field determined by a state insurance commissioner or other state regulatory official or entity to demonstrate minimum competence in risk management;

(ii) Three (3) years of experience in:

- (a) Risk financing;
- (b) Claims administration;
- (c) Loss prevention;
- (d) Risk and insurance analysis; or
- (e) Purchasing commercial lines of insurance;
- (iii) A designation as:

(a) A Chartered Property and Casualty Underwriter issued by the American Institute for Chartered Property and Casualty Underwriters of the Insurance Institute of America;

(b) An Associate in Risk Management issued by the American Institute for Chartered Property and Casualty Underwriters of the Insurance Institute of America;

(c) A Certified Risk Manager issued by the National Alliance for Insurance Education & Research;

(d) A RIMS Fellow issued by the Global Risk Management Institute; or

(e) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(iv) At least seven (7) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance and any one (1) of the designations specified in subdivision (9)(C)(iii) of this section;

(v) At least ten (10) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(vi) A graduate degree from an accredited college or university in:

- (a) Risk management;
- (b) Business administration;
- (c) Finance;
- (d) Economics; or

(e) Any other field determined by a state insurance commissioner or other state regulatory official or entity to demonstrate minimum competence in risk management;

(10) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and American Samoa;

(11) "Surplus lines broker" means an individual, firm, or corporation that is licensed in a state to sell, solicit, or negotiate insurance when this state is the home state of the insured;

(12) "Surplus lines insurer" means an unauthorized company in which nonadmitted insurance coverage may be placed; and

(13) "Unauthorized insurer" means an insurance company that is not licensed to engage in the business of insurance in this state.



**History.** Acts 1959, No. 148, § 189; **Amendments.** The 2011 amendment A.S.A. 1947, § 66-2909; Acts 2011, No. 1055, § 2. rewrote the section.

### **23-65-305. Conditions of procurement.**

(a) If certain insurance coverages cannot be procured from authorized insurers, coverage designated “surplus lines” may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance shall be procured through a licensed surplus lines broker;

(2) If this state is the home state of the insured:

(A) The full amount of insurance required shall not be procurable, after diligent effort has been made, from among authorized insurers who are actually marketing that kind or class of insurance in this state; and

(B) The amount of insurance placed in an unauthorized insurer is only the balance over the amount procurable from authorized insurers; and

(3) The soliciting agent or broker shall maintain written documentation of compliance with the requirements of this section.

(b) Surplus lines insurance may be placed by a surplus lines broker if the nonadmitted insurer:

(1) Is authorized to write the type of insurance in its domiciliary jurisdiction; and

(2) Meets the following criteria:

(A) The nonadmitted insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of:

(i) The minimum capital and surplus requirements under the laws of this state; or

(ii) Fifteen million dollars (\$15,000,000); and

(B) The nonadmitted insurer is a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers as maintained by the International Insurers Department of the National Association of Insurance Commissioners.

(c)(1) The requirements of subsection (b) of this section may be satisfied by a nonadmitted insurer possessing less than the minimum capital and surplus if the Insurance Commissioner makes an affirmative finding of acceptability.

(2) The commissioner shall consider the following factors to determine a finding of acceptability for the requirements of subsection (b) of this section:

(A) Quality of management;

(B) Capital and surplus of a parent company;

(C) Company underwriting profit and investment income trends;

(D) Market availability; and

(E) Company record and reputation within the industry.

(3) The commissioner shall not make a finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

(d) Subdivision (a)(2) of this section does not apply to a surplus lines broker seeking to procure or place nonadmitted insurance in this state for an exempt commercial purchaser if:

(1) The surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market that would provide greater protection with more regulatory oversight; and

(2) The exempt commercial purchaser has subsequently requested in writing the surplus lines broker to procure or place the insurance from a nonadmitted insurer.

**History.** Acts 1959, No. 148, § 190; 1979, No. 731, § 1; A.S.A. 1947, § 66-2910; Acts 2001, No. 1555, § 3; 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment added (b) through (d); subdivided (a)(2); and added "If this state is the home state of the insured" in (a)(2).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

### 23-65-306. Brokers' affidavits.

(a) At the time of the procuring of surplus lines insurance in this state, when this state is considered the home state of the insured, the surplus lines broker shall:

(1) Execute an affidavit on a form prescribed by the Insurance Commissioner;

(2) Provide any information that the commissioner shall require;

(3) State facts referred to in §§ 23-65-313 and 23-65-314; and

(4) File the affidavit with the commissioner within sixty (60) days following the end of the month in which the insurance was procured.

(b) Affidavits or reports filed under this section are not subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires otherwise.

**History.** Acts 1959, No. 148, § 191; 1979, No. 731, § 2; 1985, No. 804, § 9; A.S.A. 1947, § 66-2911; Acts 2001, No. 1555, § 4; 2011, No. 1055, § 2.

**Publisher's Notes.** Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed

to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

**Amendments.** The 2011 amendment subdivided (a); and inserted "in this state, when this state is considered the home state of the insured" in the introductory language of (a).

**23-65-307. Endorsement of contract.**

An insurance contract procured on behalf of an insured whose home state is this state and delivered as surplus lines coverage under this subchapter shall be initiated by or bear the name of the surplus lines broker who procured it and shall contain a conspicuous statement substantially similar to the following:

“This contract is registered and delivered as a surplus line coverage under the Surplus Lines Insurance Law, and it may in some respects be different from contracts issued by insurers in the admitted markets, and, accordingly, it may, depending upon the circumstances, be more or less favorable to an insured than a contract from an admitted carrier might be. The protection of the Arkansas Property and Casualty Guaranty Act does not apply to this contract. A tax of four percent (4%) is required to be collected from the insured on all surplus lines premiums.”

**History.** Acts 1959, No. 148, § 192; A.S.A. 1947, § 66-2912; Acts 1993, No. 118, § 2; 2001, No. 1555, § 5; 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment inserted “on behalf of an insured whose home state is this state” in the introductory paragraph.

**23-65-308. Licensing of surplus lines broker.**

(a) If an insured’s home state is this state, a person shall not procure a contract of surplus lines insurance with a nonadmitted insurer unless the insurer possesses a current surplus lines broker’s license issued by the Insurance Commissioner.

(b) A person, while licensed as a resident insurance producer of this state as to property, casualty, surety, and marine insurance, who has held the license in this or another state, or both, for three (3) years before application for a surplus lines broker’s license, and who is deemed by the commissioner to be competent and trustworthy, or a nonresident applicant holding a surplus lines broker license in his or her country of residency, may be licensed as a surplus lines broker as follows:

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner;

(2) The license fee shall be:

(A) In the amount stated in § 23-61-401(10) for each license year during any part of which the license is in force; and

(B) Paid to the commissioner;

(3) The license year shall be from the date of issuance of the license to January 1 next after its issue;

(4)(A) Before issuance of the license, a resident applicant shall file with the commissioner securities acceptable to the commissioner in favor of the State of Arkansas in the penal sum of fifty thousand dollars (\$50,000), aggregate liability, with unaffiliated entities approved by the commissioner. Thereafter for as long as the license



remains in effect, the resident applicant shall keep the securities in force and unimpaired.

(B) The securities shall be conditioned that the broker shall conduct business under the license according to the provisions of this subchapter and that he or she will promptly remit the taxes provided by the law.

(C) Securities shall not be terminated unless at least sixty (60) days' prior written notice is filed with the commissioner.

(D) Securities shall not be required of a nonresident applicant licensed in the applicant's state of residency;

(5)(A)(i) Before issuance of the license, the commissioner shall require the applicant to pass a written examination as to his or her competence to act as a surplus lines broker.

(ii) An examination shall not be required of a nonresident applicant duly licensed in the applicant's state of residency.

(B) The commissioner shall give, conduct, and grade all examinations, or he or she may arrange to have examinations administered and graded by an independent testing service as specified by contract in a fair and impartial manner and without unfair discrimination between individuals examined.

(C) The commissioner may require a reasonable waiting period before reexamination of an applicant who failed to pass a previous similar examination.

(D) The examination fee shall be the same as that charged an applicant for license as an agent, broker, or solicitor under § 23-61-401.

(c) The commissioner may utilize the national insurance producer database of the National Association of Insurance Commissioners or any other equivalent uniform national database for the licensure and renewal of an individual or entity as a surplus lines broker for the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203.

**History.** Acts 1959, No. 148, § 194; 1977, No. 789, § 4; 1985, No. 804, § 10; A.S.A. 1947, § 66-2914; Acts 1989, No. 772, § 6; 1999, No. 657, § 10; 2001, No. 1555, § 6; 2003, No. 1203, § 13; 2011, No. 1055, § 2.

**Publisher's Notes.** Acts 1985, No. 804, § 10, provided in part that the examination requirement of subdivision (4) of this section should apply only to applicants for licenses as surplus lines brokers as of January 1, 1986.

For cumulative effect of 1985 amendment to this section, see Publisher's Notes to § 23-65-306.

**Amendments.** The 2011 amendment added (a) and (c) and designated the remaining subsection as (b); subdivided (b)(2) as (b)(2) and present (b)(3); and redesignated former (b)(3) and (b)(4) as present (b)(4) and (b)(5).

## RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

**23-65-309. Acceptance of business from agents by surplus lines brokers.**

A licensed surplus lines broker may accept and place surplus lines business for an insurance agent or broker licensed in this state for the kind and class of insurance involved and may compensate the agent or broker therefor.

**History.** Acts 1959, No. 148, § 195; A.S.A. 1947, § 66-2915; Acts 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment substituted “an insurance agent” for “any insurance agent.”

**23-65-310. Surplus lines in solvent insurers.**

(a) A surplus lines broker shall place surplus lines insurance only with insurers that have been approved by the Insurance Commissioner.

(b)(1) The commissioner may maintain a list of approved foreign and alien surplus lines insurers in addition to those alien insurers maintaining status on the current National Association of Insurance Commissioners’ nonadmitted insurers’ quarterly listing.

(2) The approved list shall not contain:

(A) An insurer that is not licensed in at least one (1) state of the United States for the kind of insurance involved;

(B) A stock insurer having capital and surplus amounting to less than three million dollars (\$3,000,000);

(C) A type of insurer, other than stock insurers, having surplus of less than three million dollars (\$3,000,000);

(D)(i) An alien insurer, unless:

(a) The insurer has an established and effective trust fund within the United States administered by a recognized financial institution and held for the benefit of its policyholders; and

(b) The trust fund is in the amount of not less than one million dollars (\$1,000,000).

(ii)(a) The broker may place casualty insurance with an alien insurer or a pool of alien insurers having combined capital and surplus of five million dollars (\$5,000,000) or more, so long as the insured signs an affidavit accepting the insurance.

(b) The affidavit shall include a statement that the insurance is not available to him or her elsewhere.

(iii) The alien insurer shall:

(a) Annually report the location and balance of the trust fund to the commissioner as the commissioner prescribes; and

(b) Report to the commissioner any change in the location of the trust fund;

(E) An insurer owned or controlled by a political sovereign or an agency of a political sovereign; or

(F) An insurer that does not maintain on deposit pursuant to § 23-63-901 et seq. eligible securities having a market value at all times of not less than one hundred thousand dollars (\$100,000) conditioned on the payment of creditors or obligees of the insurer in

this state and the prompt payment of all claims arising and accruing to any persons during the term of the securities under a policy issued by the insurer.

(c)(1)(A) Annually on or before March 1 or within any extension of time that the commissioner for good cause may have granted, each foreign and alien surplus lines insurer on the approved list maintained by the commissioner shall file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding.

(B) The statement shall be in a general form and context, as required or not disapproved by the commissioner and as supplemented as required by the commissioner.

(C)(i) The statement shall be verified with an oath by the president or vice president of the insurer.

(ii) The statement of an alien insurer shall be verified by the United States manager or other officer of the alien insurer authorized to make an oath and shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to the alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible.

(2) The commissioner may waive the requirement under this subsection for verification under oath.

(3)(A) The insurer shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency.

(B) If the insurer fails to file its report on or before the due date, the penalty shall be collected by the commissioner, if necessary, by a civil suit brought by the commissioner in the Pulaski County Circuit Court. The commissioner may waive the penalty upon a showing by the insurer of good cause for its failure to file its report on or before the date due.

(4) At the time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by § 23-61-401.

(5) Upon written request received from the commissioner, an insurer shall promptly furnish to the commissioner information with respect to its transactions or affairs.

**History.** Acts 1959, No. 148, § 196; 1961, No. 466, § 10; 1973, No. 66, § 7; 1977, No. 789, § 5; 1981, No. 809, § 4; 1983, No. 522, §§ 25, 26; A.S.A. 1947, § 66-2916; Acts 1989, No. 772, §§ 7, 8; 2011, No. 1055, § 2.

**Publisher's Notes.** Acts 1973, No. 66, § 7, as amended by Acts 1977, No. 789, § 5, provided, in part, that companies then approved for the writing of surplus lines in Arkansas should, not later than twelve (12) months after March 28, 1977, possess and maintain unimpaired capital stock, if a stock insurer, or surplus, if a

foreign mutual or reciprocal insurer, in the amount set out in this section.

Acts 1983, No. 522, § 51, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

**Amendments.** The 2011 amendment subdivided former (a) as present (a) and (b) and redesignated former (b) as (c); substituted "its policyholders" for "all its policyholders wherever located in the



United States" in (b)(2)(D)(i)(a); substituted "Report" for "shall promptly report" in (b)(2)(D)(iii)(b); and rewrote (c).

### **23-65-311. Evidence of insurance — Changes.**

(a)(1) Upon placing a surplus lines coverage, the broker shall promptly issue and deliver to the insured evidence of the insurance, consisting either of the policy as issued by the insurer or the surplus lines broker's certificate if the policy is not available.

(2)(A) The certificate shall be executed by the broker and show:

- (i) The subject, coverage, conditions, and term of the insurance;
- (ii) The premium charged;
- (iii) Taxes collected from the insured; and
- (iv) The name and address of the insurer.

(B) If the direct risk is assumed by more than one (1) insurer, the certificate shall state the name, address, and proportion of the entire direct risk assumed by each insurer.

(b) If there is a change to the identity of the insurers after the issuance and delivery of the certificate, a change to the proportion of the direct risk assumed by the insurers as stated in the broker's original certificate, or a change in any other material respect as to the insurance coverage evidenced by the certificate, the broker shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverages and the insurers responsible.

(c) If a policy issued by the insurer is not available upon placement of the insurance and the broker has issued and delivered his or her certificate as provided in subsection (a) of this section, the broker shall promptly provide upon a request of the insured the policy of the insurer evidencing the insurance.

(d) A surplus lines broker who knowingly or negligently issues a false certificate of insurance or who fails to promptly notify the insured of any material change with respect to the insurance by delivery to the insured of a substitute certificate as provided in subsection (b) of this section, upon conviction of the surplus lines broker, shall be subject to the penalties provided by § 23-60-108 or to a greater applicable penalty provided by law.

(e)(1)(A) Upon written request, each approved but nonadmitted surplus lines insurer shall mail or deliver the policyholder's claim loss information to the policyholder or his or her surplus lines broker within thirty (30) days from the date of receipt of the request from the policyholder.

(B) If the claim loss information is provided to the surplus lines broker, the surplus lines broker shall deliver the claim loss information to the policyholder within seven (7) days from the date of receipt of the claim loss information from the surplus lines insurer.

(C) If the surplus lines broker generates the claim loss information for the surplus lines insurer, the claim loss information shall be provided to the policyholder within thirty (30) days from the date of receipt of the request from the policyholder.

(2)(A) "Claim loss information" as used in this subsection means the:

- (i) Date of loss;
- (ii) Property insured; and
- (iii) Amount paid.

(B) "Claim loss information" as used in this subsection does not include supporting claim file documentation, including without limitation copies of claim files, investigation reports, evaluation statements, insured's statements, and documents protected by a common law or statutory privilege.

(3) The surplus lines insurer or the surplus lines broker may charge a reasonable fee for providing the claim loss information as part of the expense of underwriting the policy.

(4) The surplus lines insurer and the surplus lines broker are not required to maintain claim loss information for more than five (5) years following the termination of coverage.

**History.** Acts 1959, No. 148, § 197; A.S.A. 1947, § 66-2917; Acts 2005, No. 1697, § 34; 2009, No. 726, § 33; 2011, No. 1055, § 2.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing,

maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

**Amendments.** The 2009 amendment, in (e), inserted (e)(1)(B) and (e)(1)(C), redesignated the remaining text of (e)(1) accordingly, inserted "from the date of receipt of the request from the policyholder" for "of the request by the policyholder" in (e)(1)(A), inserted "or the surplus lines broker" in (e)(3), inserted "and the surplus lines broker" in (e)(4), and made minor stylistic changes.

The 2011 amendment subdivided (a); and rewrote (c).

## CASE NOTES

### Construction with Other Law.

Where insurer sought a determination that a surplus-lines insurance policy endorsement it had issued to the insured excluded coverage for claims resulting from a shooting at the insured's private club, § 23-79-307, which requires the acceptance and signature of an exclusion, was not controlling; rather, subsection (b) of this section, regarding proper delivery

of the endorsement, controlled, but whether the insurer did so was immaterial because the endorsement was ambiguous and the exclusion did not apply to assaults committed by patrons. *Gawrieh v. Scottsdale Ins. Co.*, 83 Ark. App. 59, 117 S.W.3d 634 (2003).

**Cited:** *Arkansas-Oklahoma Gas Corp. v. Lukis Stewart Price Forbes & Co.*, 306 Ark. 425, 816 S.W.2d 571 (1991).

## 23-65-312. Liability of insurer as to losses and unearned premiums.

(a)(1) If a surplus lines risk has been assumed by an unauthorized insurer under this subchapter and the premium has been received by



the surplus lines broker who placed the insurance, the insurer shall be deemed to have received the premium due to it for the coverage.

(2) The insurer shall be liable to the insured for:

(A) Losses covered by the insurance; and

(B) Unearned premiums that may become payable to the insured upon cancellation of the insurance.

(b) Each unauthorized insurer assuming a surplus lines direct risk under the insurance laws of this state shall be deemed to have subjected itself to the terms of this section.

(c) This section shall not deprive the surplus lines insurer of any right of action against the surplus lines broker.

**History.** Acts 1959, No. 148, § 198; A.S.A. 1947, § 66-2918; Acts 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment subdivided (a); deleted “in all questions thereafter arising under the coverage as between the insurer and the insured” following “broker who placed the insurance”

in (a)(1); deleted “whether or not in fact the broker is indebted to the insurer with respect to the insurance or for any other cause” following “cancellation of the insurance” in (a)(2)(B); and substituted “under the insurance laws of this state” for “under this surplus lines insurance law” in (b).

#### CASE NOTES

**Cited:** Premium Fin. Specialists, Inc. v. Transportation Specialists, Inc., 768 F.2d 282 (8th Cir. 1985).

#### 23-65-313. Records of brokers.

(a) Each surplus lines broker shall keep in his or her office a full and true record of each of his or her surplus lines contracts procured within this state where this state is the home state of the insured, including a copy of the daily report, if any, and showing the following items as applicable:

(1) Amount of the insurance;

(2) Gross premium charged;

(3) Return premium paid, if any;

(4) Rate of premium charged upon the several items of property;

(5) Effective date of the contract and the contract terms;

(6) Name and address of the insurer;

(7) Name and address of the insured;

(8) Brief general description of property insured and where located; and

(9) Other information as required by the Insurance Commissioner.

(b) The records shall be open to examination by the commissioner and shall be kept available and open to inspection by the commissioner for the next five (5) years following the termination of the contracts.

**History.** Acts 1959, No. 148, § 199; A.S.A. 1947, § 66-2919; Acts 2001, No. 1555, § 7; 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment inserted “within this state where this state is the home state of the insured” in



(a); and deleted "at all times" following "The records shall" in (b).

### **23-65-314. Quarterly statement.**

(a) On or before March 1, June 1, September 1, and December 1 of each year, a surplus lines broker shall file with the Insurance Commissioner a statement for the preceding period of the surplus lines insurance transactions of an insured whose home state is the State of Arkansas.

(b) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

- (1) The gross amount of each kind of insurance transacted;
- (2) The aggregate gross premiums charged, exclusive of sums collected to cover state or federal taxes;
- (3) The aggregate of returned premiums and taxes paid to insureds;
- (4) The aggregate of net premiums; and
- (5) Additional information as required by the commissioner.

**History.** Acts 1959, No. 148, § 200; 1979, No. 731, § 3; A.S.A. 1947, § 66-2920; Acts 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment, substituted "Quarterly" for "Annual" in the section heading; in (a), added "On or before March 1, June 1, September 1, and

December 1 of each year," deleted "on or before March 1 of each year file" following "Each surplus lines broker shall," and substituted "the period of the surplus lines insurance transactions of an insured whose home state is the state of Arkansas" for "calendar year."

### **23-65-315. Tax on brokers.**

(a) No later than sixty (60) days following the end of the month in which surplus lines insurance was procured, the surplus lines broker shall remit to the Treasurer of State through the Insurance Commissioner a tax of four percent (4%) on the direct premiums written, less return premiums and exclusive of sums collected to cover state or federal taxes, on surplus lines insurance subject to tax transacted by the surplus lines broker during the preceding months as shown by his or her affidavit filed with the commissioner for the privilege of transacting business as a surplus lines broker in this state.

(b) The commissioner may participate in a multistate agreement or enter into a compact for the purpose of reporting, collecting, and apportioning surplus lines insurance premium taxes.

(c) If a surplus lines insurance policy covers risks or exposures only partially in this state and the commissioner has entered into an agreement with other states for the apportionment of premium taxes for multistate risks, the tax payable by the surplus lines broker shall be computed and paid on the proportion of the premium that is properly allocable to the risks or exposures located in this state according to the terms of the agreement.

**History.** Acts 1959, No. 148, § 201; 456, § 12; 2001, No. 1555, § 8; 2011, No. A.S.A. 1947, § 66-2921; Acts 1987, No. 1055, § 2.

**Amendments.** The 2011 amendment made stylistic changes in (a); rewrote (b); and added (c).

### **23-65-316. Penalty for failure to file quarterly statement or remit tax.**

(a)(1) If a surplus lines broker fails to file his or her quarterly statement by the due dates in § 23-65-314, he or she shall be liable for a fine of fifty dollars (\$50.00) for each day of delinquency commencing with the due date.

(2) The Insurance Commissioner may grant a reasonable extension of time within which the statement may be filed for good cause shown and after a written request.

(3) The fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction.

(4) The commissioner shall pay to the Treasurer of State any fine so collected.

(b)(1) If a surplus lines broker fails to remit the tax as provided by law by the due date, the surplus lines broker shall be liable for a fine of fifty dollars (\$50.00) for each day of delinquency commencing with the sixty-first day after the end of the month in which surplus lines insurance was procured.

(2) The commissioner shall pay to the Treasurer of State any fine so collected.

**History.** Acts 1959, No. 148, § 202; 1985, No. 804, § 11; A.S.A. 1947, § 66-2922; Acts 1987, No. 456, § 13; 2011, No. 1055, § 2.

**Publisher's Notes.** For cumulative effect of 1985 amendment to this section, see Publisher's Notes to § 23-65-306.

**Amendments.** The 2011 amendment, in (a)(1), substituted "quarterly statement by the due dates in § 23-65-314" for "annual statement by March 1" and "the due date" for "March 1"; and deleted former (b)(2) and (b)(3) and redesignated the remaining subdivision as (b)(2).

### **23-65-317. Revocation of broker's license.**

(a) The Insurance Commissioner shall revoke a surplus lines broker's license:

(1) If the broker fails to file his or her annual statement or to remit the tax as required by law;

(2) If the broker fails to maintain an office, keep records, or allow the commissioner to examine his or her records as required by law; or

(3) For any cause for which an agent's license may be revoked.

(b) The commissioner may suspend or revoke a license whenever he or she deems the suspension or revocation to be for the best interest of the people of this state.

(c) The procedures provided by § 23-64-218 for the suspension or revocation of an agent's license shall be applicable to suspension or revocation of a surplus lines broker's license.

(d) A broker whose license has been revoked shall not be licensed within one (1) year thereafter or until payment of fines or delinquent taxes.

**History.** Acts 1959, No. 148, § 203; A.S.A. 1947, § 66-2923; Acts 2001, No. 1555, § 9; 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment substituted “a license” for “any or all licenses” in (b).

### **23-65-318. Action against insurer — Service of process.**

(a) When this state is the home state of the insured, an unauthorized insurer may be sued upon any cause of action arising in this state under any contract issued by it as a surplus lines contract, or certificate thereof issued by the surplus lines broker, under the procedure provided in § 23-65-203.

(b)(1) If this state is the home state of the insured, an unauthorized insurer issuing the policy or accepting the risk shall be deemed to have authorized service of process against it as provided in this section and to have appointed the Insurance Commissioner as its agent for service of process issuing upon any cause of action arising in this state under any policy.

(2) The policy shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process.

**History.** Acts 1959, No. 148, § 204; A.S.A. 1947, § 66-2924; Acts 2011, No. 1055, § 2.

**Amendments.** The 2011 amendment, in (a), added “When this state is the home state of the insured” and substituted “§

23-65-203” for “Acts 1939, No. 181 [repealed]”; subdivided (b); and, in (b)(1), added “If this state is the home state of the insured” and deleted “in the manner and to the effect” following “service of process against it.”

### **23-65-319. Withdrawal of approval.**

(a) The Insurance Commissioner may remove an approved surplus lines insurer if the commissioner has reason to believe that the insurer:

- (1) Is in unsound financial condition;
- (2) Is no longer eligible under § 23-65-310;
- (3) Has willfully violated the laws of this state;
- (4) Does not make reasonably prompt payment of just losses and claims in this state or elsewhere; or
- (5) Has failed to file its annual statement when due.

(b) The commissioner shall promptly mail notice of removals to each surplus lines broker that is currently licensed.

**History.** Acts 1959, No. 148, § 207.1, as added by Acts 1983, No. 522, § 24; A.S.A. 1947, § 66-2928; Acts 2011, No. 1055, § 2.

**Publisher's Notes.** For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-65-310.

**Amendments.** The 2011 amendment deleted “at any time” following “if” in the introductory language of (a); and made stylistic changes in (b).



**23-65-320. Domestic surplus lines insurers.**

(a) A domestic insurer possessing policyholder surplus of at least twenty million dollars (\$20,000,000) may be:

(1) Designated as a domestic surplus lines insurer with the written approval of the Insurance Commissioner; and

(2) Allowed to write surplus lines insurance in any jurisdiction in which it is eligible.

(b) A domestic surplus lines insurer is:

(1) Subject to the surplus lines premium tax;

(2) Deemed a nonadmitted surplus lines insurer in the State of Arkansas; and

(3) Deemed a nonadmitted surplus lines insurer under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203.

(c) A domestic surplus lines insurer is not subject to:

(1) The Arkansas Property and Casualty Insurance Guaranty Act, § 23-90-101 et seq.; or

(2) The Arkansas Life and Health Insurance Guaranty Association Act, § 23-96-101 et seq.

(d) All provisions of the Arkansas Insurance Code regarding financial and solvency requirements apply to domestic surplus lines insurers unless domestic surplus lines insurers are otherwise specifically exempted.

**History.** Acts 2011, No. 332, § 1.

**Effective Dates.** The Arkansas Insurance Code, referred to in this section, was

originally enacted by Acts 1959, No. 148.

Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**SUBCHAPTER 4 — MULTISTATE AGREEMENTS OR COMPACTS****SECTION.**

23-65-401. Agreement authorized — Requirements.

23-65-402. Applicability of multistate agreement or compact.

**SECTION.**

23-65-403. Committees' approval of agreements or compacts required.

**Effective Dates.** Acts 2011, No. 1055, § 4: Apr. 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Insurance Commissioner is not able to enter into agreements with other jurisdictions to regulate taxes on surplus lines insurers. Therefore, an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

**23-65-401. Agreement authorized — Requirements.**

(a) The Insurance Commissioner may enter into written multistate agreements or compacts with other state jurisdictions on behalf of the State of Arkansas to provide for cooperation and assistance among member jurisdictions in the administration and collection of taxes imposed on multistate surplus lines insurance.

(b) A multistate agreement or compact authorized by this subchapter may provide for:

- (1) Determining the home state for surplus lines insurers and surplus lines brokers;
- (2) Establishing the record requirements for surplus lines brokers;
- (3) Audit procedures;
- (4) The exchange of information;
- (5) Uniform criteria for eligibility of insurers and eligibility for licensing of surplus lines brokers;
- (6) Reporting requirements and reporting periods;
- (7) Methods for collecting and forwarding surplus lines taxes;
- (8) Penalties to another jurisdiction; and
- (9) Rules to facilitate the administration of the multistate agreement or compact.

(c) A multistate agreement or compact authorized by this subchapter:

- (1) Shall not preclude the commissioner from auditing the records of a person subject to this subchapter;
- (2) Is not effective until filed with the commissioner; and
- (3) Shall have the same effect as enacted legislation.

**History.** Acts 2011, No. 1055, § 3.

**23-65-402. Applicability of multistate agreement or compact.**

On and after July 21, 2011, the effective date of the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203, in the event of a conflict, the terms of a multistate agreement or compact shall prevail over conflicting state law.

**History.** Acts 2011, No. 1055, § 3.

**23-65-403. Committees' approval of agreements or compacts required.**

A multistate agreement or compact entered into by the Insurance Commissioner shall be approved by the Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce.

**History.** Acts 2011, No. 1055, § 3.

## CHAPTER 66

### TRADE PRACTICES

#### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. TRADE PRACTICES ACT.
3. MISCELLANEOUS PROHIBITED PRACTICES.
4. HOME SERVICE ACT.
5. FRAUDULENT INSURANCE ACTS PREVENTION.
6. INSURANCE SALES CONSUMER PROTECTION ACT.
7. DRUG ENFORCEMENT ADMINISTRATION REGISTRY NUMBER PROTECTION.

**A.C.R.C. Notes.** References to “this chapter” in 23-66-210 and 23-66-513 may not apply to subchapters 6 and 7, which were enacted subsequently.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

#### SUBCHAPTER 2 — TRADE PRACTICES ACT

##### SECTION.

- 23-66-201. Title.
- 23-66-202. Purpose.
- 23-66-203. Definitions.
- 23-66-204. Provisions of subchapter additional to existing law.
- 23-66-205. Unfair competition or unfair or deceptive acts or practices prohibited.
- 23-66-206. Unfair methods of competition and unfair or deceptive acts or practices defined.
- 23-66-207. Rules and regulations to identify prohibited methods of competition, acts, or practices.

##### SECTION.

- 23-66-208. Power of commissioner to examine and investigate.
- 23-66-209. Hearings — Procedures.
- 23-66-210. Cease and desist and penalty orders — Modifications.
- 23-66-211. Penalty for violation of cease and desist orders.
- 23-66-212. Judicial review of cease and desist orders.
- 23-66-213. Judicial review by intervenor.
- 23-66-214. Immunity from prosecution.
- 23-66-215. Penalty for late payment of claims by health carriers.

**Publisher’s Notes.** Acts 1987, No. 156, § 3, provided that this act shall be deemed cumulative of prior laws and no prior law or part of a law shall be deemed to be in conflict with this act unless failure to so determine would prevent giving effect to an explicit provision of this act.

**Effective Dates.** Acts 1973, No. 41, § 10: Jan. 31, 1973. Emergency clause provided: “It is hereby found and determined by the General Assembly that the insurance laws of this state are inad-

equated for the protection of the public and that the immediate passage of this Act is necessary in order to provide for adequate protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 729, § 9: Apr. 3, 1975. Emergency clause provided: “It is hereby found and determined by the General As-



sembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 156, § 4: Mar. 10, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during

which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral pre-need laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Gov-

ernor may veto the bill. If the bill is vetoed by the Governor and the veto is overrid-

den, it shall become effective on the date the last house overrides the veto."

### RESEARCH REFERENCES

**ALR.** Definition of who is a "consumer" entitled to protection of state deceptive trade practices acts. 63 A.L.R.5th 1.

**Ark. L. Rev.** Notes, *Aetna v. Broadway Arms: The Tort of Bad Faith*, 38 Ark. L. Rev. 462.

**U. Ark. Little Rock L.J.** Notes, *Torts — Tort of Bad Faith in First Party Actions Recognized. Aetna Casualty and Surety*

*Co. v. Broadway Arms Corp.*, 281 Ark. 128, 664 S.W.2d 463 (1984), 7 U. Ark. Little Rock L.J. 671.

*Arkansas Law Survey, Stewart, Insurance*, 8 U. Ark. Little Rock L.J. 183.

*Casey, Bad Faith in First Party Insurance Contracts — What's Next?*, 8 U. Ark. Little Rock L.J. 237.

### CASE NOTES

#### **Bad Faith.**

Neither this subchapter nor the penalty and attorneys fees provisions of § 23-79-208 preempt the area upon which the tort of bad faith is founded. *Aetna Cas. & Sur. Co. v. Broadway Arms Corp.*, 281 Ark. 128, 664 S.W.2d 463 (1984).

A violation of this subchapter is not necessarily evidence of bad faith. *Aetna Cas. & Sur. Co. v. Broadway Arms Corp.*, 281 Ark. 128, 664 S.W.2d 463 (1984).

**Cited:** *Bell v. Kansas City Fire & Marine Ins. Co.*, 616 F. Supp. 1305 (W.D. Ark. 1985).

## 23-66-201. Title.

This subchapter may be referred to as the "Trade Practices Act".

**History.** Acts 1959, No. 148, § 208; A.S.A. 1947, § 66-3001.

### CASE NOTES

**Cited:** *Douglass v. Nationwide Mut. Ins. Co.*, 323 Ark. 105, 913 S.W.2d 277 (1996).

## 23-66-202. Purpose.

(a) The purpose of this subchapter is to regulate trade practices in the business of insurance in accordance with the intent of the United States Congress as expressed in Pub. L. No. 79-15 by defining, or providing for the determination of, all practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

(b) However, no provisions of this subchapter are intended to establish or extinguish a private right of action for a violation of any provision of this subchapter.

**History.** Acts 1959, No. 148, § 209; 1981, No. 809, § 5; A.S.A. 1947, § 66-3002.

**U.S. Code.** Public Law No. 79-15, referred to in this section, is codified as 15 U.S.C. § 1011 et seq.

### CASE NOTES

#### In General.

Because Ark. Ins. R. 43 was promulgated under authority from the Arkansas Trade Practices Act, which provided no private right of action to an insured for violations of the Act or of regulations promulgated under the Act's authority, insured was not a first-party claimant within the meaning of the rule as there was no claim for which insured could

assert a right to any payment or defense from insurer; thus, it was doubtful whether any misstatements in a letter that was sent by insurer regarding tail coverage after the expiration of a claims-made policy amounted to an Ark. Ins. R. 43 violation. *Design Professionals Ins. Co. v. Chicago Ins. Co.*, 454 F.3d 906 (8th Cir. 2006).

### 23-66-203. Definitions.

As used in this subchapter:

- (1) "Commissioner" means the Insurance Commissioner of this state;
- (2)(A) "Depository institution" means a bank or savings association.

(B) The terms "depository institution" or "depository corporation" do not include an insurance company;

(3) "Insurance policy" or "insurance contract" means any contract of insurance, indemnity, medical or hospital service, suretyship, or annuity which is issued, proposed for issuance, or intended for issuance by any person; and

(4)(A) "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, and adjusters.

(B)(i) "Person" also means medical service plans and hospital service plans as defined in § 23-75-101.

(ii) For purposes of this subchapter, medical and hospital service plans shall be deemed to be engaged in the business of insurance.

**History.** Acts 1959, No. 148, § 210; 1973, No. 41, § 1; A.S.A. 1947, § 66-3003; Acts 2003, No. 1747, § 1.

### 23-66-204. Provisions of subchapter additional to existing law.

The powers vested in the Insurance Commissioner by this subchapter shall be additional to any other powers to order restitution or enforce any penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices declared to be unfair or deceptive.

**History.** Acts 1959, No. 148, § 220; A.S.A. 1947, § 66-3013; Acts 2005, No. 1697, § 12.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General As-

sembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given



period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage

will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage.”

### **23-66-205. Unfair competition or unfair or deceptive acts or practices prohibited.**

No person shall engage in this state in any trade practice which is defined in this subchapter as being, or determined pursuant to this subchapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. This subchapter shall apply to policies and contracts of surplus line insurers, as appropriate and unless the context requires otherwise.

**History.** Acts 1959, No. 148, § 211; A.S.A. 1947, § 66-3004; Acts 1999, No. 881, § 8.

### **23-66-206. Unfair methods of competition and unfair or deceptive acts or practices defined.**

The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) “Boycott, coercion, and intimidation” means entering into any agreement to commit or, by any concerted action, committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(2) “Churning of business” means a situation in which the licensee replaces an existing policy of life insurance or accident and health insurance, or both, and that replacement is:

(A) Not in accordance with § 23-66-307; or

(B) Without objective demonstration by the licensee of the purpose of replacing the policy for the benefit and betterment of the insured;

(3) “Defamation” means making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or of any pamphlet, circular, article, or literature that is false or maliciously critical of or derogatory to the financial condition of any person and that is calculated to injure that person;

(4)(A) “Failure to maintain complaint handling procedures” means failing to adopt and implement reasonable standards for the prompt handling of complaints received by the person from insureds or claimants, or from the Insurance Commissioner on behalf of insureds or claimants, and failing to keep a record thereof.

(B) A complete complaints register of all complaints that the person has received since the date of its last examination shall be maintained. This complaints register shall indicate:

- (i) The total number of complaints;
- (ii) The classification of complaints by line of insurance;
- (iii) The nature of each complaint;
- (iv) The disposition of each complaint;
- (v) The time it took to process each complaint; and
- (vi) Such other information as the commissioner may reasonably require by way of regulations.

(C) For purposes of this subdivision (4), "complaint" means any written communication primarily expressing a grievance;

(5) "Failure to maintain conflict of interest procedures" means failing to adopt and implement on or before the next financial or market conduct examination conducted by the commissioner on and after passage of this act and thereafter maintain written conflict of interest procedures and provisions, in form and format satisfactory to the commissioner, designed to identify and resolve promptly any general or pecuniary conflicts of interest as to officers, directors, managers, supervisors, and other key personnel of domestic insurers, including, but not limited to, domestic stock and mutual insurers, domestic stipulated premium insurers, domestic mutual assessment life and disability insurers, domestic health maintenance organizations, domestic farmers' mutual aid associations, domestic hospital or medical service corporations, and domestic fraternal benefit societies;

(6) "False information and advertising generally" means making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business that is untrue, deceptive, or misleading;

(7) "False statements and entries" means:

(A) Filing with any supervisory or other public official or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of a person with intent to deceive; and

(B) Knowingly making any false entry of a material fact in any book, report, or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of the person in any book, report, or statement of that person;

(8) "Misrepresentation and false advertising of insurance policies" means making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustrations, circular, statement, sales presentation, omission, or comparison, which:

(A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;



(B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;

(C) Makes any false or misleading statements to the dividends or share of surplus previously paid on any insurance policy;

(D) Is misleading or is a misrepresentation as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates;

(E) Uses any name or title of any insurance policy or class of insurance policies, misrepresenting the true nature thereof;

(F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

(G) Is a misrepresentation for the purpose of effectuating a pledge or assignment of or effecting a loan against any insurance policy; or

(H) Misrepresents any insurance policy as being shares of stock;

(9)(A) "Policy cancellations" means cancellations of insurance coverage on a property or casualty risk that has been in force over sixty (60) days or after the effective date of a renewal policy or an annual anniversary date unless the cancellation is based upon at least one (1) of the following reasons:

(i) Nonpayment of premium;

(ii) Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;

(iii) The occurrence of a material change in the risk that substantially increases any hazard insured against after policy issuance;

(iv) Violation of any local fire, health, safety, building, or construction regulation or ordinances with respect to any insured property or the occupancy of the property that substantially increases any hazard insured against under the policy;

(v) Nonpayment of membership dues in those cases in which the bylaws, agreements, or other legal instruments of the insurer issuing the policy require payment as a condition of the issuance and maintenance of the policy; or

(vi) A material violation of a material provision of the policy.

(B) Cancellations of property and casualty policies shall only be effective when notice of cancellation is mailed or delivered by the insurer to the named insured and to any lienholder or loss payee named in the policy at least twenty (20) days prior to the effective date of cancellation. However, when cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason for cancellation shall be given.

(C) The provisions of this subdivision (9) shall not be applicable to any policy providing coverage for workers' compensation or employers' liability or to any policy providing coverage for personal automobile liability, automobile physical damage, or automobile collision, or any combination thereof;

(10)(A) "Rebates", except as otherwise expressly provided by law, means the act of knowingly:



(i) Permitting or offering to make or making any life, health, and annuity insurance contract, or agreement as to the contract, other than as plainly expressed in the insurance contract issued thereon;

(ii) Paying, allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance contract any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any valuable consideration or inducement whatever not specified in the contract; or

(iii) Giving, selling, or purchasing or offering to give, sell, or purchase as inducement to the insurance contract or in connection with the contract any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership or any dividends or profits accrued thereon or anything of value whatsoever not specified in the insurance contract.

(B) Subdivision (10)(A) or subdivision (14) of this section shall not be construed as including within "rebates" or "unfair discrimination" any of the following practices:

(i) In the case of any contract of life insurance or life annuity, the paying of bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that those bonuses or abatement of premiums shall be fair and equitable for policyholders and for the best interests of the company and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense under the policy at the end of the first or any subsequent policy year of insurance under the policy, which may be made retroactive only for the policy year;

(iv) Engaging in an arrangement that does not violate section 106 of the Bank Holding Company Act Amendments of 1970, 12 U.S.C. § 1972, as interpreted by the Board of Governors of the Federal Reserve System, or section 1464(q) of the Home Owners' Loan Act, 12 U.S.C. § 1461 et seq.; or

(v) Under a prior written agreement with a client paying total annual premiums, for all lines of business, of one hundred thousand dollars (\$100,000) or more, adjusting or refunding a part of a consulting fee charged by a licensed insurance consultant based on commissions received by the consultant from insurance carriers;

(11) "Stock operations and advisory board contracts" means issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock, or other capital stock or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind that promise returns and profits as an inducement to insurance;

(12) "Underwriting: refusing certain risks" means refusing to issue or limiting the amount of coverage on a property or casualty risk based upon knowledge of an insurer's nonrenewal of the applicant's previous property or casualty policy or contract;

(13) "Unfair claims settlement practices" means committing or performing with such frequency as to indicate a general business practice any of the following:

(A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(B) Failing to acknowledge and act reasonably and promptly upon communications with respect to claims arising under insurance policies;

(C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(F) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(G) Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured;

(H) Making claim payments to policyholders or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(I) Delaying the investigation or payment of claims by requiring an insured or claimant, or the physician of either, to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(J) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts of applicable law for denial of a claim or for the offer of a compromise settlement;

(K) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by those insureds;

(L) Attempting to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application;

(M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(N) Failing to promptly settle claims, when liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; and



(O) Requiring as a condition of payment of a claim that repairs must be made by a particular contractor, supplier, or repair shop;

(14) "Unfair discrimination" means:

(A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such a contract;

(B) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium policy fees or rates charged for any policy or contract of accident and health insurance, or in the benefits payable thereunder, or in any of the terms or conditions of the contract, or in any other manner whatever;

(C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk unless:

(i) The refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;

(D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained therein because of the age of the residential property unless:

(i) The refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;

(E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the marital status of the individual. However, nothing in this subdivision (14)(E) shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;

(F) Terminating or modifying coverage or refusing to issue or refusing to renew any policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subdivision (14)(F) shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract; and

(G)(i) Refusing to insure or continue to insure an individual or risks solely because of the individual's race, color, creed, national origin, citizenship, status as a victim of domestic abuse, or sex.



(ii) As used in subdivision (14)(G)(i) of this section, "domestic abuse" means:

(a) Physical harm, bodily injury, or assault between family or household members;

(b) The infliction of fear of imminent physical harm, bodily injury, or assault between family members or household members; or

(c) Sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state; and

(15)(A) "Unfair financial planning practices" includes an insurance producer:

(i)(a) Holding himself or herself out, directly or indirectly, to the public as a financial planner, investment adviser, consultant, financial counselor, or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters, or trust and estate matters, if the insurance producer is, in fact, engaged only in the sale of policies.

(b) However, subdivision (15)(A)(i)(a) of this section does not preclude a person who holds some form of formal recognized financial planning or consultant certification or designation from using the certification or designation when the person is only selling insurance.

(c) Subdivision (15)(A)(i)(a) of this section does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of policies;

(ii)(a) Engaging in the business of financial planning without disclosing in writing to the client, prior to the execution of the agreement provided for in subdivision (15)(A)(iii) of this section, or solicitation of the sale of a product or service that:

(1) He or she is also an insurance salesperson; and

(2) A commission for the sale of an insurance product will be received in addition to a fee for financial planning, if the sale involves a commission.

(b) The disclosure requirement under this subdivision (15)(A)(ii) may be met by including it in any written disclosure required by federal or state securities law; and

(iii)(a)(1) Charging fees other than commissions for financial planning by an insurance producer unless the fees are based upon a written agreement that is signed by the party to be charged in advance of the performance of the services under the agreement.

(2) A copy of the agreement under subdivision (15)(A)(iii)(a)(1) of this section must be provided to the party to be charged at the time the agreement is signed by the party.

(3) The services for which the fee is to be charged must be specifically stated in the agreement.

(4) The amount of the fee to be charged or how it will be determined or calculated must be specifically stated in the agreement.

(5) The agreement must state that the client is under no obligation to purchase any insurance product through the insurance producer or financial consultant.

(b) The insurance producer shall retain a copy of the agreement for not less than three (3) years after completion of services, and a copy shall be available to the commissioner upon request.

(B) "Unfair financial planning practices" does not include funeral expense insurance and prepaid funeral benefits contracts.

**History.** Acts 1959, No. 148, § 212; 1963, No. 75, § 1; 1973, No. 41, § 2; 1975, No. 729, § 5; 1981, No. 809, §§ 6-9; A.S.A. 1947, § 66-3005; Acts 1987, No. 156, §§ 1, 2; 1987, No. 959, § 20; 1993, No. 1145, § 1; 1995, No. 178, § 1; 1997, No. 1000, § 4; 1999, No. 381, § 1; 2001, No. 1603, §§ 24, 25; 2003, No. 1747, §§ 2, 3; 2009, No. 619, § 1; 2011, No. 797, § 1.

**Publisher's Notes.** In reference to the term "on and after passage of this act" in (5), Acts 1997, No. 1000, was approved by the Governor on April 1, 1997, and, pursuant to Acts 1997, No. 1000, § 30, became effective July 2, 1997.

**Amendments.** The 2009 amendment rewrote (14)(G).

The 2011 amendment substituted "Bank Holding Company Amendments of 1970" for "Bank Holding Company Amendments of 1972" in (10)(B)(iv); and added (10)(B)(v).

**Meaning of "this act".** Acts 1997, No. 1000, codified as §§ 17-19-301, 19-4-803, 23-60-102, 23-61-201, 23-63-302, 23-63-206, 23-67-212, 23-67-219, 23-68-103, 23-68-108, 23-68-126, 23-68-133, 23-68-134, 23-79-503, 23-79-513, 23-86-201, 23-86-202, 23-86-208, 23-86-209, 23-92-307, 26-51-423, 26-51-436.

## RESEARCH REFERENCES

**ALR.** Preemption Issues Arising Under Home Owners' Loan Act of 1933, 12 USCS § 1461 et seq. 13 A.L.R. Fed. 2d 161.

**U. Ark. Little Rock L.J.** Survey-Insurance, 10 U. Ark. Little Rock L.J. 587.

## CASE NOTES

### ANALYSIS

Defamation.

Policy Cancellations.

Unfair Claims Settlement Practices.

### Defamation.

Penalty of up to \$10,000 per act of violation was permitted under the Arkansas Deceptive Trade Practices Act, subdivision (3) of this section; clearly, under that standard, the initial jury award of \$15 million to the insured in his defamation action against the insurer would have been excessive. Nevertheless, when balanced against the reprehensibility of the conduct and the ratio of punitive to compensatory damages of only 2.5:1, the supreme court failed to see a due process violation under the Gore standards in the jury's award of \$15 million in punitive damages. *Allstate Ins. Co. v. Dodson*, 2011 Ark. 19, — S.W.3d — (2011).

### Policy Cancellations.

The notice requirement of subsection (9)(B) did not apply where the insureds

requested that their insurer terminate their policy and simultaneously obtained greater replacement insurance coverage. *Columbia Mut. Ins. Co. v. Home Mut. Fire Ins. Co.*, 74 Ark. App. 166, 47 S.W.3d 909 (2001).

### Unfair Claims Settlement Practices.

Under subdivision (9), an insurer must be shown to have committed or performed the prohibited practices "with such frequency as to indicate a general business practice." Evidence of more than the fact that the insurer refused to pay a claim on a policy issued in violation of § 23-79-105, which requires that an insured apply for the insurance or consents thereto in writing in one case, is required. *Hunt v. Pyramid Life Ins. Co.*, 21 Ark. App. 261, 732 S.W.2d 167 (1987).

**Cited:** *Garner v. Foundation Life Ins. Co.*, 17 Ark. App. 13, 702 S.W.2d 417 (1986); *Wacaser v. Insurance Comm'r*, 321 Ark. 143, 900 S.W.2d 191 (1995); *Colonia Underwriters Ins. Co. v. Worthen Nat'l Bank*, 53 Ark. App. 106, 919 S.W.2d 515 (1996).



**23-66-207. Rules and regulations to identify prohibited methods of competition, acts, or practices.**

(a) The Insurance Commissioner may, after notice and hearing, promulgate reasonable rules and regulations, as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by § 23-66-206 or § 23-66-312, but the regulations shall not enlarge upon or extend the provisions of those sections.

(b) The regulations shall be subject to review in accordance with § 23-61-307.

**History.** Acts 1959, No. 148, § 217; 1973, No. 41, § 6; A.S.A. 1947, § 66-3010.

**23-66-208. Power of commissioner to examine and investigate.**

(a) The Insurance Commissioner shall have power to examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether the person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by § 23-66-205.

(b)(1) If the person engaged in the business of insurance is a depository institution, the commissioner shall have the power to examine and investigate the insurance activities of the depository institution in order to determine whether the depository institution has been or is engaged in any unfair trade practice prohibited by this subchapter.

(2) Before beginning an examination or investigation under subdivision (b)(1) of this section, the commissioner shall notify the appropriate bank regulatory agency of the commissioner's intent to examine or investigate the depository institution and shall advise the appropriate federal banking agency of the suspected violations of state law.

**History.** Acts 1959, No. 148, § 213; A.S.A. 1947, § 66-3006; Acts 2003, No. 1747, § 4.

**23-66-209. Hearings — Procedures.**

(a)(1) Whenever the Insurance Commissioner has reason to believe that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, whether or not defined in § 23-66-206 or § 23-66-312 and that a proceeding by the commissioner in respect thereto would be to the interest of the public, the commissioner shall issue and serve upon the person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be fewer than ten (10) days after the date of the service thereof.

(2) If the person in subdivision (a)(1) of this section is a depository institution, the commissioner shall have the power to require the



depository institution to produce books, papers, records, correspondence, or other documents that the commissioner deems relevant only to an inquiry of the insurance activities of the depository institution.

(b) At the time and place fixed for the hearing, the person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such a person to cease and desist from the acts, methods, or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear, and be heard at the hearing by counsel or in person.

(c) Nothing contained in this subchapter shall require the observance at the hearing of formal rules of pleading or evidence.

(d)(1) Upon the hearing, the commissioner:

(A) May administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence; and

(B) Shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents that the commissioner deems relevant to the inquiry.

(2)(A) The commissioner may, upon the hearing, and shall, upon the request of any party, cause to be made a stenographic record of all the evidence and all the proceedings had at such a hearing.

(B) If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review.

(3) In case of a refusal of any person to comply with any subpoena issued pursuant to this subsection or to testify with respect to any matter concerning which the person may be lawfully interrogated, the Pulaski County Circuit Court or the circuit court of the county where the party resides, on application of the commissioner, may issue an order requiring the person to comply with the subpoena and to testify. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(e)(1) Statements of charges, notices, orders, and other processes of the commissioner under this subchapter may be served by anyone authorized by the commissioner, either in the manner provided by law for service of process in civil actions or by registering and mailing a copy thereof to the person affected by such a statement, notice, order, or other process at his or her or its residence or principal office or place of business.

(2) The verified return by the person so serving the statement, notice, order, or other process setting forth the manner of the service shall be proof of process, and the return postcard receipt for the statement, notice, order, or other process, registered and mailed as described in this section, shall be proof of the service of process.

**History.** Acts 1959, No. 148, § 214;  
1973, No. 41, § 3; A.S.A. 1947, § 66-3007;  
Acts 2003, No. 1747, § 5.

**23-66-210. Cease and desist and penalty orders — Modifications.**

(a) If after the hearing the Insurance Commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from engaging in the method of competition, act, or practice, and, if the act or practice is a violation of § 23-66-206 or § 23-66-312, the commissioner may at his or her discretion order any one (1) or more of the following:

(1) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each and every act or violation but not to exceed an aggregate penalty of ten thousand dollars (\$10,000) unless the person knew or reasonably should have known he or she was in violation of this subchapter. In this case, the penalty shall be not more than five thousand dollars (\$5,000) for each and every act or violation but in an amount not to exceed an aggregate penalty of fifty thousand dollars (\$50,000) in any six-month period; or

(2) Suspension or revocation of the person's license, if he or she knew or reasonably should have known he or she was in violation of this chapter.

(b) Until the expiration of the time allowed under § 23-66-212(a) for filing a petition for review by appeal if no petition has been filed within the time or, if a petition for review has been filed within the time, then until the transcript of the record in the proceeding has been filed in the circuit court, as provided in § 23-66-212, the commissioner may at any time, upon such notice and in such manner as the commissioner shall deem proper, modify or set aside in whole or in part any order issued by him or her under this section.

(c) After the expiration of the time allowed for filing a petition for review if no petition has been filed within the time, the commissioner may at any time after notice and opportunity for hearing reopen and alter, modify, or set aside, in whole or in part, any order issued by him or her under this section whenever, in his or her opinion, conditions of fact or of law have so changed as to require that action, or if the public interest shall so require.

(d) If the person who has engaged in an unfair method of competition or an unfair or deceptive act or practice under subsection (a) of this section is a depository institution, the commissioner shall:

(1) If practicable, notify the appropriate bank regulatory agency before:

(A) Imposing a monetary penalty on the depository institution; or

(B) Suspending or revoking the depository institution's insurer's license; and

(2) Provide to the appropriate bank regulatory agency a copy of the findings.



**History.** Acts 1959, No. 148, § 215; A.S.A. 1947, § 66-3008; Acts 2003, No. 1973, No. 41, § 4; 1981, No. 809, § 10; 1747, § 6.

### **23-66-211. Penalty for violation of cease and desist orders.**

Any person who violates a cease and desist order of the Insurance Commissioner under § 23-66-210 while the order is in effect may, after notice and hearing upon order of the commissioner, be subject at the discretion of the commissioner to any one (1) or more of the following:

(1) A monetary penalty of not more than ten thousand dollars (\$10,000) for each and every act of violation; or

(2) Suspension or revocation of that person's license.

**History.** Acts 1959, No. 148, § 219; 1973, No. 41, § 8; 1981, No. 809, § 11; A.S.A. 1947, § 66-3012.

### **CASE NOTES**

#### **Punitive Damages.**

Penalty of up to \$10,000 per act of violation was permitted under the Arkansas Deceptive Trade Practices Act, subdivision (1) of this section; clearly, under that standard, the initial jury award of \$15 million to the insured in his defamation action against the insurer would have been excessive. Nevertheless, when bal-

anced against the reprehensibility of the conduct and the ratio of punitive to compensatory damages of only 2.5:1, the supreme court failed to see a due process violation under the Gore standards in the jury's award of \$15 million in punitive damages. *Allstate Ins. Co. v. Dodson*, 2011 Ark. 19, — S.W.3d — (2011).

### **23-66-212. Judicial review of cease and desist orders.**

(a)(1) Any person subject to an order of the Insurance Commissioner under § 23-66-210 or § 23-66-211 may obtain a review of the order by filing in the Pulaski County Circuit Court, within thirty (30) days from the date of the service of the order, a written petition praying that the order of the commissioner be set aside.

(2) A copy of the petition shall be immediately served upon the commissioner, and thereupon the commissioner immediately shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner.

(3) Upon the filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of the petition shall operate as a stay of the order of the commissioner, and shall have the power to make and enter upon the pleadings, evidence, and proceedings set forth in the transcript a decree modifying, affirming, or reversing the order of the commissioner in whole or in part.

(4) The findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.



(b)(1) To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the commissioner.

(2) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that the additional evidence is material and that there was reasonable grounds for the failure to adduce the evidence in the proceeding before the commissioner, then the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

(3) The commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence so taken. The commissioner shall then file the modified or new findings which shall be conclusive if supported by substantial evidence, and file his or her recommendations, if any, for the modification or setting aside of his or her original order, with the return of the additional evidence.

(c) An order issued by the commissioner under § 23-66-210 shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no petition has been filed within the time. However, the commissioner may thereafter modify or set aside his or her order to the extent provided in § 23-66-210; or

(2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(d) No order of the commissioner under this subchapter, or order of a court to enforce the order, shall in any way relieve or absolve any person affected by the order from any liability under any other laws of this state.

**History.** Acts 1959, No. 148, § 216; 1973, No. 41, § 5; 1985, No. 804, § 5; A.S.A. 1947, § 66-3009.

**Publisher's Notes.** Acts 1985, No. 804, § 32, provided, in part, that the act would

be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

### 23-66-213. Judicial review by intervenor.

(a) If, after a hearing under § 23-66-210 or § 23-66-211, the report of the Insurance Commissioner does not charge a violation of this subchapter, then any intervenor in the proceedings may within thirty (30) days after the service of the report cause a petition, notice of appeal, or

petition for writ of certiorari to be filed in the Pulaski County Circuit Court for review of the report.

(b) Upon the review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding the report of the commissioner, constitutes a violation of this subchapter and contains penalties pursuant to § 23-66-212.

**History.** Acts 1959, No. 148, § 218;  
1973, No. 41, § 7; A.S.A. 1947, § 66-3011.

### **23-66-214. Immunity from prosecution.**

(a) If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and shall, notwithstanding, be directed to give the testimony or produce the evidence, then he or she must nonetheless comply with the direction, but he or she shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence pursuant thereto and no testimony so given or evidence produced shall be received against him or her upon any criminal action, investigation, or proceeding.

(b) However, no individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her while so testifying. The testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning the perjury. Further, he or she shall not be exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law of this state.

(c) The individual may execute, acknowledge, and file in the office of the Insurance Commissioner a statement expressly waiving the immunity or privilege in respect to any transaction, matter, or thing specified in the statement. Thereupon, the testimony of the person or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and if so received or produced, the individual shall not be entitled to any immunity or privilege on account of any testimony he or she may so give or evidence so produced.

**History.** Acts 1959, No. 148, § 221;  
A.S.A. 1947, § 66-3014.

**23-66-215. Penalty for late payment of claims by health carriers.**

(a)(1) A health carrier shall pay a penalty of twelve percent (12%) per annum for late payment of claims under a health insurance contract pursuant to regulations promulgated by the Insurance Commissioner, without necessity for demand for payment by a claimant.

(2) Hiring a third-party administrator or other person to process claims shall not relieve a health carrier of its obligation to pay this penalty.

(b) For purposes of this section:

(1) "Claimant" means a person insured or covered by a health carrier, a provider holding a valid assignment from a person insured or covered by a health carrier, or a provider contracted with a health carrier, who is claiming a benefit under a health insurance contract;

(2)(A) "Health carrier" means a health maintenance organization, hospital medical service corporation, or a disability insurance company.

(B) "Health carrier" includes a self-insured governmental or church plan and third-party administrators that administer or adjust disability benefits for a disability insurer, hospital medical service corporation, health maintenance organization, self-insured governmental plan, or self-insured church plan.

(C) "Health carrier" does not include:

(i) An automobile insurer paying medical or hospital benefits under § 23-89-202(1) or a self-insured employer health benefits plan; or

(ii) Any person, company, or organization licensed or registered to issue or who issues any insurance policy or insurance contract in this state as described in §§ 23-62-102 and 23-62-104 — 23-62-107 providing medical or hospital benefits for accidental injury or disability; and

(3)(A) "Health insurance contract" means a disability insurance policy, a hospital medical service corporation contract, a health maintenance organization contract, or a plan document issued or provided by a health carrier.

(B) "Health insurance contract" does not include a disability income insurance policy, a long-term care contract, a hospital indemnity contract, an accident-only contract, or any other form of disability insurance policy that provides a benefit as a result of a sickness or accident that does not directly cover expenses related to health care treatment.

**History.** Acts 2001, No. 1454, § 1.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Arkansas Insurance Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.



## SUBCHAPTER 3 — MISCELLANEOUS PROHIBITED PRACTICES

## SECTION.

- 23-66-301. Misrepresentation or false claims or proofs.
- 23-66-302. False representations.
- 23-66-303. Intimidation or coercion of business.
- 23-66-304. Fictitious groups.
- 23-66-305. Misrepresentations in application for insurance.
- 23-66-306. Misrepresentation of other policies.
- 23-66-307. Actions required to replace a life insurance policy or annuity — Rules — Penalties.
- 23-66-308. Rebates, discounts, abatements, etc.
- 23-66-309. Charge for substitution of policy.
- 23-66-310. Illegal dealing in premiums — Excess charges for insurance.
- 23-66-311. Business development compensation to life policyholders.

## SECTION.

- 23-66-312. Favored agent or insurer — Coercion of debtors.
- 23-66-313. Overwriting contracts of life insurer.
- 23-66-314. Common ownership, management, and directors of insurance companies.
- 23-66-315. Confidential information.
- 23-66-316. Advertising by health and accident insurers and prepaid health plans.
- 23-66-317. [Repealed.]
- 23-66-318. Claims or loss histories — Provision for copies to named insureds.
- 23-66-319. Cancellation of insurance policies by third parties.
- 23-66-320. Genetic Nondiscrimination in Insurance Act.
- 23-66-321. Method of payment of claims.

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**Effective Dates.** Acts 1973, No. 41, § 10: Jan. 31, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the insurance laws of this state are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for adequate protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 898, § 5: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning insurance industry usages of the credit histories of insureds and applicants for personal lines property and casualty insurance are not consistent or uniform, and do not currently require adequate disclosure to the insured or applicant when such reports are relied upon by insurers solely to decline a new policy

application, or to limit coverage on the risk, or to non-renew existing coverage. Current laws are inadequate for the protection of the insurance-buying public in this state, and the immediate passage of this act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of

the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1452, § 1: Jan. 1, 2004.

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**ALR.** Insurer's tort liability for consequential or punitive damages for wrongful failure or refusal to defend insured. 20 A.L.R.4th 23.

Waiver or estoppel of insurer on the

basis of statements or omissions in promotional, illustrative, or explanatory materials given to insured. 63 A.L.R.5th 427.

**Am. Jur.** 43 Am. Jur. 2d, Ins., § 1003 et seq.

## 23-66-301. Misrepresentation or false claims or proofs.

Any person shall upon conviction be punished as provided in § 23-60-108 who, knowing it to be such:

(1) Presents or causes to be presented a false or fraudulent claim, or any false or fraudulent proof in support of a claim, for the payment of a loss under an insurance policy;

(2) Prepares, makes, or subscribes any false or fraudulent account, certificate, report, affidavit, or proof of loss, or other document or writing, with the intent or knowledge that it will be presented or used in support of a claim under an insurance policy; or

(3) Conceals, withholds, or misrepresents any information material to a claim under an insurance policy.

**History.** Acts 1959, No. 148, § 233; A.S.A. 1947, § 66-3026.

**23-66-302. False representations.**

Any person who makes any material false statement, representation, or pretense for the purpose of obtaining insurance business shall upon conviction be subject to the penalties provided in § 23-60-108.

**History.** Acts 1959, No. 148, § 222;  
A.S.A. 1947, § 66-3015.

**CASE NOTES**

**Cited:** Eubanks v. National Fed'n Student Protection Trust, 290 Ark. 541, 721 S.W.2d 644 (1986).

**23-66-303. Intimidation or coercion of business.**

No person shall use intimidation or coercion as a means of securing insurance business.

**History.** Acts 1959, No. 148, § 224;  
A.S.A. 1947, § 66-3017.

**23-66-304. Fictitious groups.**

(a) No insurer, whether an authorized or unauthorized insurer, shall make available through any rating plan or form any fire, casualty, or surety insurance to any person, firm, corporation, or association of individuals at any preferred rate, premium, or form of contract based upon any fictitious grouping of the firm, corporation, or association.

(b) "Fictitious grouping" is defined and declared to be the grouping by membership, nonmembership, license, franchise, agreement, contract, or any other method or means wherein the person, firm, corporation, or association of individuals of a group may receive a preferred rate, premium, or form of insurance contract.

(c) Nothing in this section shall apply to the State of Arkansas or any governmental unit thereof, including counties, school districts, municipalities, state agencies, or any other governmental subsidiary, to life or accident and health insurance or to annuity contracts, nor to any insurer that restricts its insurance coverage to members of a particular association or organization with which the insurer is directly affiliated.

**History.** Acts 1959, No. 148, § 231; A.S.A. 1947, § 66-3024; Acts 2001, No. 1963, No. 75, § 2; 1979, No. 615, § 1; 1603, § 26.

**23-66-305. Misrepresentations in application for insurance.**

(a) No agent, broker, solicitor, examining physician, or other person shall make a false or fraudulent statement or representation in, or relative to, an application for insurance.

(b) Violations of this section shall be punishable under § 23-60-108.



**History.** Acts 1959, No. 148, § 232;  
A.S.A. 1947, § 66-3025.

### CASE NOTES

**Evidence — Sufficient.**

Evidence of misrepresentation held substantial. *Wacaser v. Insurance* Comm'r, 321 Ark. 143, 900 S.W.2d 191 (1995).

### **23-66-306. Misrepresentation of other policies.**

(a) No person shall make or issue, or cause to be made or issued, any written or oral statements misrepresenting or making incomplete comparisons regarding the terms or conditions or benefits contained in any policy or contract of insurance for the purpose of inducing or attempting to induce the owner of the policy or contract of insurance to forfeit or surrender the policy or contract or to allow it to lapse for the purpose of replacing the policy or contract with another.

(b)(1) No person shall misrepresent the benefits, advantages, conditions, or terms of a medicare supplement insurance policy, certificate, or contract of insurance, nor make or issue or cause to be made or issued, any written or oral statement misrepresenting the terms or conditions or benefits contained in any medicare supplement policy, certificate, or contract of insurance for the purpose of inducing or attempting to induce any individual to purchase coverage under the medicare supplement policy, certificate, or contract of insurance.

(2) No person shall make or issue, or cause to be made or issued, any written or oral statements misrepresenting or making incomplete comparisons regarding the terms or conditions or benefits contained in any medicare supplement insurance policy or certificate or contract of insurance for the purpose of inducing or attempting to induce the insured of the policy or certificate or contract of insurance to forfeit or surrender the policy or certificate or contract or to allow it to lapse for the purpose of replacing the policy or certificate or contract with another.

(3) Any person who violates this subsection shall upon conviction be guilty of a Class D felony and shall be punished by a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the state penitentiary for not more than six (6) years, or by both fine and imprisonment.

**History.** Acts 1959, No. 148, § 223;  
A.S.A. 1947, § 66-3016; Acts 1987, No. 205, § 1.

### **23-66-307. Actions required to replace a life insurance policy or annuity — Rules — Penalties.**

(a) The General Assembly finds that:

(1) It is the public policy of this state that life and accident and health insurance producers shall provide reasonable and professional service to each insured or prospective insured;

(2) Each producer is charged with the responsibility of exercising discretion and good faith in the sales presentation or transaction;

(3) It is within the general welfare of the people that each life and accident and health insurance producer, when professionally advisable, shall improve upon or change the type of insurance that any insured or prospective insured presently has by providing either better coverage or an overall program of insurance more suitable for the needs of the insured, his or her family, or a business; and

(4) Abuses occur when insurance producers:

(A) Sell or solicit unsuitable insurance products;

(B) Fail to provide reasonable or professional service to an insured or a prospective insured; or

(C) Fail to exercise good faith and professional discretion in an insurance sales presentation or transaction.

(b) If an insurance producer attempts to sell a new individual life insurance policy or individual annuity contract or asks or urges a person to apply for a particular kind of life insurance or annuity from a particular company, it is unlawful for the insurance producer to encourage, induce, or solicit an insured to permit an existing individual life insurance policy or an existing individual annuity contract that has developed or may develop a cash surrender value to lapse or to otherwise forfeit or surrender the existing policy or contract unless the insurance producer:

(1)(A) Furnishes the policyholder a written and dated memorandum comparing the provisions of the existing policy or contract with the provisions of the proposed policy or contract.

(B) The written memorandum shall be signed by the producer and by the insured to acknowledge receipt of the written memorandum; and

(2)(A) Files a duplicate of the memorandum with the company represented by the producer.

(B) The company and the producer shall retain the duplicate memorandum for five (5) years.

(c) The Insurance Commissioner may:

(1) Prescribe the form of the written memorandum required by subsection (b) of this section; and

(2) Promulgate reasonable rules after notice and hearing to implement this section.

(d) A violation of this section is:

(1) A Class A misdemeanor; and

(2) Punishable by disciplinary action under the Arkansas Insurance Code.

**History.** Acts 1968 (1st Ex. Sess.), No. 12, §§ 1-4; A.S.A. 1947, §§ 66-3029 — 66-3032; Acts 1987, No. 456, § 14; 2001, No. 1603, § 27; 2005, No. 1994, § 205; 2009, No. 539, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2009 amendment, in (a), inserted the introductory language, substituted "producer" for "agent" or similar language in (a)(1) through (a)(3), and rewrote (a)(4); rewrote and combined (b) and (c) as present (b); inserted (c); rewrote (d); and made minor punctuation and stylistic changes.

## CASE NOTES

### Failure to Disclose.

In suit to cancel contract because of usury, affidavits stating that creditor did not inform purchaser that credit insurance could be obtained at a lower premium and that creditor received a com-

mission on the premium charged for the credit insurance constituted inferences from which a violation of the usury laws might be drawn. *Robinson v. Rebsamen Ford, Inc.*, 258 Ark. 935, 530 S.W.2d 660 (1975).

### 23-66-308. Rebates, discounts, abatements, etc.

(a) No property, casualty, or surety insurer or any employee thereof and no broker, agent, or solicitor shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insure or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy except to the extent provided for in an applicable filing with the Insurance Commissioner as provided by law.

(b) No insured named in a policy, nor any employee of the insured, shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any special favor or advantage or valuable consideration or inducement.

(c) This section shall not be construed as prohibiting:

(1) The payment of commissions or other compensation to licensed agents, brokers, or solicitors;

(2) An insurer from allowing or returning to its participating policyholders, members, or subscribers any dividends, savings, or unabsorbed premium deposits; or

(3) A licensed insurance consultant who is also a licensed producer from adjusting or refunding to his or her clients any part of a consulting fee under a prior written agreement with a client paying total annual premiums, for all lines of business, of one hundred thousand dollars (\$100,000) or more based on commissions received by the consultant from insurers.

(d) This section does not include within the definition of rebates or otherwise prohibit the practice of engaging in an arrangement that would not violate section 106 of the Bank Holding Company Act Amendments of 1972, 12 U.S.C. § 1972, as interpreted by the Board of



Governors of the Federal Reserve System, or section 1464(q) of the Home Owners' Loan Act, 12 U.S.C. § 1461 et seq.

(e) The commissioner may promulgate rules to implement this section.

**History.** Acts 1959, No. 148, § 226; A.S.A. 1947, § 66-3019; Acts 2003, No. 1747, § 7; 2011, No. 797, §§ 2, 3.

**Amendments.** The 2011 amendment subdivided (c); and added (c)(3) and (e).

## CASE NOTES

### ANALYSIS

Purpose.

Sharing Commissions.

#### Purpose.

This section was intended to, and clearly and unambiguously does, provide what the insurer will charge for an insurance policy and what the insured must pay for it. It leaves no alternative; it says that the insurance carrier must charge the premium shown on the policy and that the insured will not knowingly pay anything other than the premium shown unless there are applicable filings authorizing a premium other than that shown. *Wal-Mart Stores, Inc. v. Crist*, 664 F. Supp. 1242 (W.D. Ark. 1987), rev'd, 855 F.2d 1326 (8th Cir. Ark. 1988).

#### Sharing Commissions.

Former similar section was not designed to legalize the payment of a com-

mission to the agent of any other company than the one from whom he received the commission, otherwise, it would serve to constitute only a cloak to enable a violator of former section which prohibited the sharing of premiums with unlicensed persons to do the things that are condemned by statute. *Schneider v. O'Neal*, 145 F. Supp. 120 (E.D. Ark. 1956), aff'd in part, reversed in part, 243 F.2d 914 (8th Cir. 1957) (decision under prior law).

Where an insurance agency entered into a contract with another agency not an authorized agent of the company whereby the first agency was to receive the commission on policies sold by it, the contract violated the Arkansas insurance statutes and was not enforceable. *Schneider v. O'Neal*, 145 F. Supp. 120 (E.D. Ark. 1956), aff'd in part, reversed in part, 243 F.2d 914 (8th Cir. 1957) (decision under prior law).

### 23-66-309. Charge for substitution of policy.

No person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property and no trustee, director, officer, agent, or other employee of the person shall directly or indirectly require that a borrower pay a consideration of any kind to substitute the insurance policy of one (1) insurer for that of another.

**History.** Acts 1959, No. 148, § 228; A.S.A. 1947, § 66-3021.

### 23-66-310. Illegal dealing in premiums — Excess charges for insurance.

(a) No person shall willfully collect any sum as a premium or charge for insurance that is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an

insurance policy issued by an insurer as authorized by the Arkansas Insurance Code.

(b)(1) No person shall willfully collect as a premium or charge for insurance any sum in excess of the premium or charge applicable to the insurance in accordance with the applicable classifications and rates as filed and approved if necessary by the Insurance Commissioner, or in cases in which classifications, premiums, or rates are not required by the Arkansas Insurance Code to be so filed and approved, the premiums and charges shall not be in excess of those specified in the policy and as fixed by the insurer.

(2) However, the provision in subdivision (b)(1) of this section shall not be deemed to prohibit:

(A) The charging and collection by surplus lines brokers licensed under § 23-65-101 et seq. of the amount of applicable state and federal taxes in addition to the premium and expense of underwriting as required by the insurer on risks written pursuant to the surplus lines law;

(B) The charging and collection by a life insurer of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy;

(C) A property and casualty agent from charging and collecting interest upon premiums and charges that remain unpaid for a period of thirty (30) days beyond the date that the original premium was due, subject to the supervision of the commissioner. The interest shall not exceed the maximum rate prescribed by the Arkansas Constitution;

(D) The collection of membership dues by a property and casualty agent when membership of the applicant in an organization is a prerequisite of the insurer to the issuance of coverage; or

(E) The charging of a fee by a licensed consultant if the fee is not excessive.

(c) Nothing shall prohibit a duly licensed property or casualty agent or broker from charging a fee to the insured in addition to the premium properly charged for a policy or contract according to the insurer's rate and rule filings with the State Insurance Department, provided that:

(1) Each such fee is separately disclosed on the invoice or billing statement mailed or delivered to the insured; and

(2) The aggregate sum of the fees and all producers' commissions or other compensation due and owing for that policy or contract does not exceed twenty percent (20%) of the total gross premium charged the insured by the insurer for that policy or contract.

(d)(1) Any fee charged by a licensed insurance agent or producer for services which are not customarily associated with the solicitation, negotiation, or servicing of an insurance policy or contract shall not be deemed a premium or a charge for insurance and not prohibited by this section if:

(A) The fee is based upon a written agreement signed by the party to be charged in advance of the performance of services under the agreement;

- (B) A copy of the agreement is provided to the party to be charged;
  - (C) The services for which the fee is charged are:
    - (i) Specifically stated in the agreement; and
    - (ii) Other than those customarily associated with solicitation, negotiation, and servicing of an insurance policy or contract;
  - (D) The amount of the fee charged is specifically stated in the agreement;
  - (E) The agreement contains a statement that:
    - (i) If an insurance policy or contract is purchased through the agent or producer, the agent or producer will receive a policy commission or fee in connection with the sale;
    - (ii) The fee charged is unrelated to any compensation received by the agent or producer for the sale of any insurance product; and
    - (iii) The fee under the agreement may not be waived under any circumstances; and
  - (F)(i) The agent or producer retains a copy of the agreement for not less than three (3) years after completion of the services.
  - (ii) The copy shall be available to the commissioner and his or her staff upon request.
- (2) This subsection shall not apply to:
- (A) Transactions for financial or estate planning services offered by insurance producers under § 23-66-206(15); or
  - (B) Membership dues payable to entities either directly or indirectly affiliated with an agent or insurer.

**History.** Acts 1959, No. 148, § 230; 1979, No. 731, § 4; 1981, No. 809, § 12; 1985, No. 1059, §§ 1, 2; A.S.A. 1947, § 66-3023; Acts 1987, No. 927, § 3; 1989, No. 772, §§ 9, 10; 2003, No. 1747, § 8; 2005, No. 506, § 32.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Cross References.** Return of premium following rejection of applicant, § 23-79-108.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

## CASE NOTES

### Premiums and Charges.

Farm bureau membership fees were a prerequisite and not a condition of insurance or a part of the premiums paid to farm bureau mutual insurance companies where (1) the membership fees were divided between the farm bureaus, a federation of farm bureaus, and the national farm bureau organization, with none of the membership fees going to the mutual insurance companies, (2) county farm bu-

reaus are not in the business of selling insurance, and (3) persons joining farm bureaus join a county farm bureau, rather than a mutual insurance company. *Farm Bureau Policy Holders & Members v. Farm Bureau Mut. Ins. Co.*, 335 Ark. 285, 984 S.W.2d 6 (1998).

**Cited:** *Eubanks v. National Fed'n Student Protection Trust*, 290 Ark. 541, 721 S.W.2d 644 (1986).



**23-66-311. Business development compensation to life policyholders.**

No life insurer shall discriminate between its policyholders by allowing, or agreeing to allow, to any policyholder, whether as an individual or as a member of a class, a portion or percent of any premium collected by the insurer from any policyholder on the pretense of making the policyholder an agent of the insurer or otherwise, unless that policyholder regularly qualifies and is licensed as an agent of the insurer, and is instrumental in actually securing business for the insurer, as evidenced by his or her name appearing on the application or applications of other policyholders, as soliciting agent, and his or her compensation for the services is limited to a reasonable commission on the business thus secured by the insurer through his or her instrumentality.

**History.** Acts 1959, No. 148, § 225;  
A.S.A. 1947, § 66-3018.

**23-66-312. Favored agent or insurer — Coercion of debtors.**

(a) No person, including, but not limited to, depository institutions and affiliates of depository institutions, primary and secondary mortgagees, vendors, or lenders may:

(1) Unreasonably disapprove the insurance policy or binder provided by a borrower for the protection of the property securing the credit or lien;

(2)(A) Require, directly or indirectly, that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge in connection with the handling of any insurance policy or binder required as security for a loan on real estate or pay a separate charge to substitute the insurance policy or binder of one (1) insurer for that of another.

(B) Subdivision (a)(2)(A) of this section does not apply to charges that would be required if the person or depository institution or affiliate of a depository institution is the licensed producer providing the insurance; or

(3) Use or disclose information resulting from a requirement that a borrower, mortgagor, or purchaser furnish insurance of any kind when that information is to the advantage of the mortgagee, vendor, or lender or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with this requirement.

(b)(1) Subdivision (a)(2) of this section does not include the interest that may be charged on premium loans or premium advancements in accordance with the security instrument.

(2)(A) For purposes of subdivision (a)(1) of this section, a rejection shall not be deemed unreasonable if it is based on uniformly applied reasonable standards relating to the extent of coverage required and the financial soundness and the services of an insurer.

(B) The standards shall not discriminate against any particular type of insurer, nor shall the standards call for rejection of a policy because it contains coverage in addition to that required in the credit transaction.

(3) Subdivision (a)(3) of this section does not restrict or limit the release of insurance information of a customer by a depository institution to any officer, director, employee, agent, or affiliate of the depository institution for the purpose of soliciting or selling insurance.

(4)(A) The Insurance Commissioner may investigate the affairs of any person to whom this subsection applies to determine whether the person has violated this subsection.

(B) If a violation of this subsection is found, the person in violation shall be subject to the same procedures and penalties as are applicable to §§ 23-66-203, 23-66-206, 23-66-207, and 23-66-209 — 23-66-213 and shall be liable for actual or compensatory damages resulting from an unreasonable disapproval of an insurance policy or binder.

(5) Once a binder has been issued, the insurer must issue a policy within ninety (90) days.

(6) All information given on the binder must be without material change when the policy is issued.

(c) The provisions of this section do not apply to credit-related insurance, such as credit life or credit accident and health insurance.

**History.** Acts 1973, No. 41, § 9; A.S.A. 1947, § 66-3033; Acts 1987, No. 610, § 1; 2001, No. 1728, § 1; 2003, No. 1747, § 9.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-66-313. Overwriting contracts of life insurer.

(a) No life insurer shall pay or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, or medical director or other physician charged with the duty of examining risks or applicants for insurance, except regular fees paid for making examinations, nor shall the insurer pay to any officer of the insurer, other than an agent, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in the insurer or procuring an application therefor, by any person whomsoever, or upon the assumption of any life insurance risk or contingent upon the payment of any renewal premium, unless and until the contract providing for the payment shall have first been filed with and approved by the Insurance Commissioner.

(b) The commissioner shall not approve any contract found by him or her to be unfair or unreasonable or contrary to the best interests of the insurer, or if it provides compensation other than reasonable compen-

sation for substantial service actually rendered or to be rendered to the insurer.

(c) If any insurer violates this section, the commissioner shall revoke its certificate of authority.

**History.** Acts 1959, No. 148, § 229; A.S.A. 1947, § 66-3022.

**23-66-314. Common ownership, management, and directors of insurance companies.**

(a) Any insurer may retain, invest in, or acquire the whole or any part of the capital stock of any other insurers, or have a common management with any other insurers, unless the retention, investment, acquisition, or common management is inconsistent with any other provision of the Arkansas Insurance Code, or unless by reason thereof the business of the insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(b) Any person otherwise qualified may be a director of two (2) or more insurers which are competitors unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

**History.** Acts 1959, No. 148, § 227; A.S.A. 1947, § 66-3020.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No.

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Cross References.** Monopolies generally, § 4-75-301 et seq.

**CASE NOTES**

**ANALYSIS**

Consolidation.  
Restriction of Business.

**Consolidation.**

An agreement between several local insurance agencies, which had no authority to fix the price of premiums to be paid for insuring property, to transfer their business and goodwill to another with the view of decreasing the expenses of the several agencies did not create a combina-

tion in violation of former similar section. Bloom v. Home Ins. Agency, 91 Ark. 367, 121 S.W. 293 (1909) (decision under prior law).

**Restriction of Business.**

A corporation engaged in the fire insurance business as incident to the sale of its business and goodwill may agree to refrain from engaging in the business of a local fire insurance agency. Bloom v. Home Ins. Agency, 91 Ark. 367, 121 S.W. 293 (1909) (decision under prior law).

**23-66-315. Confidential information.**

(a)(1) When a borrower is required to maintain insurance and to furnish evidence of the insurance to a depository institution, an affiliate of a depository institution, creditor, mortgagee, assignee, or lender as a condition for obtaining or keeping the loan, the lender, mortgagee, assignee, or creditor is prohibited from disclosing to other persons or



parties, directly or indirectly; information with respect to the expiration dates of the insurance or other insurance policy information so as to enable any person or party to solicit the insurance or any renewal thereof, without first obtaining the written consent of the policyholder for such a disclosure to be made.

(2) Nor shall any other person or party request the disclosure of the information, so as to facilitate solicitations of the insurance or any renewal thereof, without first obtaining the written consent of the policyholder.

(3) Nor shall any lender, mortgagee, assignee, or creditor use any of the information contained in a policy of insurance for the purpose of soliciting insurance business with respect to the insured real property from the borrower.

(b) These prohibitions do not apply to disclosure of insurance information of a customer to any officer, director, employee, agent, or affiliate of the depository institution for the purpose of soliciting or selling insurance or when the depository institution, an affiliate of a depository institution, lender, mortgagee, assignee, or creditor has been advised in writing by the insurer or its agent that the insurance on the property will be cancelled or will not be renewed.

(c) Willful violation of this section by any depository institution, an affiliate of a depository institution, lender, mortgagee, assignee, or creditor or by any other person or party who may request the disclosure of the information from the lender, mortgagee, assignee, or creditor shall be punishable as a Class C misdemeanor.

**History.** Acts 1979, No. 388, §§ 1-3;  
A.S.A. 1947, §§ 66-3021.1 — 66-3021.3;  
Acts 2001, No. 1728, § 2.

## RESEARCH REFERENCES

<b>U. Ark. Little Rock L.J.</b> Strother, Survey of Insurance Law, 3 U. Ark. Little Rock L.J. 242.	Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.
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### **23-66-316. Advertising by health and accident insurers and prepaid health plans.**

(a) It shall be unlawful for any insurance company or association transacting any health and accident or hospital or surgical insurance or prepaid hospital and surgical or health care plan in this state, in violation of a prior order or regulation of the Insurance Commissioner directed to the company or association, to make, issue, circulate, or place before the public or to cause the making, issuing, circulation, or placing before the public in a newspaper, magazine, or other publication or in the form of a notice, brochure, circular, pamphlet, letter, or poster or by way of any radio or television station or in any other way or manner any advertisement, announcement, or statement with respect to the terms, benefits, premiums, or advantages of the policy or plan

unless and until the advertisement, announcement, or statement has been filed with and approved by the commissioner, pursuant to the prior order or regulation, as not being untrue, deceptive, or misleading in any respect.

(b)(1) Any company or association violating the provisions of this section shall be guilty of a violation and upon a first conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and for a second or subsequent conviction shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

(2) Each violation shall constitute a separate offense.

**History.** Acts 1965, No. 155, §§ 1, 2; A.S.A. 1947, §§ 66-3027, 66-3028; Acts 2005, No. 1994, § 153.

### **23-66-317. [Repealed.]**

**Publisher's Notes.** This section, concerning the effect of a consumer report on issuance or renewal of coverage, was repealed by Acts 2003, No. 1452, § 1, effective

January 1, 2004. The section was derived from Acts 1993, No. 898, § 1; 1999, No. 1535, § 1.

### **23-66-318. Claims or loss histories — Provision for copies to named insureds.**

(a)(1) A vendor of loss history information shall make all disclosures and furnish the reports without charge to the insured if within thirty (30) days after receipt by the insured of a notification of declination, cancellation, nonrenewal, or reduction in coverage the insured so requests.

(2) Otherwise, the vendor of loss history information may impose a reasonable charge on the insured for making disclosure.

(b) Property and casualty insurers are not required to send such reports to named insureds when transmitting the data or reports to licensed rate service or advisory organizations for statistical or statutory data compilation purposes.

(c)(1) The provisions of this section are intended to and shall apply only to personal lines insurance issued by property and casualty insurers authorized to transact insurance business in this state, and are not intended to apply to commercial lines property and casualty insurance.

(2) The provisions of this section are not intended to conflict with any state insurance laws which require insurers to furnish loss histories to insureds or named insureds upon request.

**History.** Acts 1993, No. 1008, § 1.

**23-66-319. Cancellation of insurance policies by third parties.**

(a) Anyone holding the right to request cancellation of the named insured's insurance policy, other than the insurer, shall send to the insured and to the insured's agent or broker of record at least ten (10) days' written notice of the intention to cancel the policy. The right to be mailed this notice is personal to the named insured and cannot be waived, nor may it be assigned by the insured to the person or entity that holds the right to request the cancellation.

(b) After expiration of the ten-day period in which to cure the default, a notice of cancellation of the policy may be sent to the insurer, with a copy to the named insured.

(c) Any notices failing to comply with this section shall be ineffective to cancel the policy.

(d) This section shall not apply to annuities or disability or life insurance.

**History.** Acts 2001, No. 919, § 1.

**23-66-320. Genetic Nondiscrimination in Insurance Act.**

(a) This section shall be known and may be cited as the "Genetic Nondiscrimination in Insurance Act".

(b) For the purposes of this section:

(1) "Disability insurance" means insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto, but shall not include disability income or long-term care insurance;

(2) "DNA" means deoxyribonucleic acid;

(3)(A) "Genetic information" means information derived from the results of a genetic test.

(B) Genetic information shall not include:

(i) Family history;

(ii) The results of a routine physical examination or test;

(iii) The results of a routine chemical, blood, or urine analysis;

(iv) The results of a test to determine drug use;

(v) The results of a test for the presence of the human immunodeficiency virus; or

(vi) The results of any other test commonly accepted in clinical practice at the time it is ordered by the insurer;

(4)(A) "Genetic test" means a laboratory test of the DNA, RNA, chromosomes, or enzyme activity for genetic disease of an individual for the purpose of identifying the presence or absence of inherited alterations in the DNA, RNA, chromosomes, or enzyme activity for genetic disease that cause a predisposition for a clinically recognized disease or disorder.

(B) "Genetic test" shall not include:

(i) A routine physical examination or a routine test performed as a part of a physical examination;



- (ii) A chemical, blood, or urine analysis;
- (iii) A test to determine drug use;
- (iv) A test for the presence of the human immunodeficiency virus;

or

(v) Any other test commonly accepted in clinical practice at the time it is ordered by the insurer;

(5)(A) "Insurer" means any individual, corporation, association, partnership, insurance support organization, fraternal benefit society, insurance agent, third-party administration, self-insurer, or any other legal entity engaged in the business of insurance which is licensed to do business in or incorporated or domesticated or domiciled in or under the statutes of this state, or actually engaged in business in this state, regardless of where the contract of insurance is written or the plan is administered or where the corporation is incorporated, that issues disability policies or plans or that administers any other type of disability insurance policy containing medical provisions, including, but not limited to, any nonprofit hospital service and indemnity and medical service and indemnity corporation, health maintenance organizations, preferred provider organizations, prepaid health plans, and the State and Public School Life and Health Insurance Plan.

(B) "Insurer" shall not include insurers issuing life, disability income, or long-term care insurance;

(6)(A) "Policy" or "policy form" means any:

(i) Policy, contract, plan, or agreement of disability insurance, or subscriber certificates of medical care corporations, health care corporations, hospital service associations, or health care maintenance organizations, delivered or issued for delivery in this state by any insurer;

(ii) Certificate, contract, or policy issued by a fraternal benefit society;

(iii) Certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state; and

(iv) Evidence of coverage issued by a health maintenance organization.

(B) "Policy" or "policy form" shall not include life, disability income, and long-term care insurance policies; and

(7) "RNA" means ribonucleic acid.

(c) No insurer, for the purpose of determining eligibility of any individual for any insurance coverage, establishing premiums, limiting coverage, renewing coverage, terminating coverage, or any other underwriting decision in connection with the offer, sale, or renewal or continuation of a policy, except to the extent and in the same fashion as an insurer limits coverage or increases premiums for loss caused or contributed to by other medical conditions presenting an increased degree of risk, shall:

(1) Require or request, directly or indirectly, any individual or a member of the individual's family to obtain a genetic test; and

(2) Condition the provision of the policy upon a requirement that an individual take a genetic test.

(d) Nothing in this section shall limit an insurer’s right to decline an application or enrollment request for a policy, charge a higher rate or premium for such a policy, or place a limitation on coverage under such a policy, on the basis of manifestations of any condition, disease, or disorder.

(e)(1) Any violation of subsections (c) and (d) of this section by an insurer shall be deemed an unfair practice pursuant to § 23-66-206.

(2) In addition, any individual who is damaged by an insurer’s violation of this section may recover in a court of competent jurisdiction equitable relief, which may include a retroactive order, directing the insurer to provide insurance coverage to the damaged individual under the same terms and conditions as would have applied had the violation not occurred.

(f) Notwithstanding any language in this section to the contrary, this section shall not apply to an insurer or to an individual or third-party dealing with an insurer in the ordinary course of underwriting, conducting, or administering the business of life, disability income, or long-term care insurance.

**History.** Acts 2001, No. 1221, § 1.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

**23-66-321. Method of payment of claims.**

All claims paid by an insurer authorized to do business in this state to any person having a claim under any insurance contract for any type of insurance authorized by the laws of this state issued by an insurer shall be paid by check or draft of the insurer to the order of, or by electronic funds transfer to an account of, the claimant to whom payment of the claim is due pursuant to the policy provisions.

**History.** Acts 2001, No. 1604, § 44.

**SUBCHAPTER 4 — HOME SERVICE ACT**

SECTION.  
23-66-401. Title.  
23-66-402. Definitions.  
23-66-403. Rules and regulations.  
23-66-404. Required practices.

SECTION.  
23-66-405. Premiums.  
23-66-406. Deceptive practices.  
23-66-407. Private cause of action.  
23-66-408. Violations.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this subchapter is set out as enacted by Acts 1993, No. 932. A similar act, Acts 1993, No. 288 read as follows:

"SECTION 1. Short Title. This act may be cited as the 'Home Service Act'.

"SECTION 2. Definitions. As used in this act:

"(a) 'Home service insurance' means any property, casualty, life or disability insurance policy where such policy is marketed, sold, issued, or delivered through the debit system, whereby premiums for such policy are customarily collected at the payor's home or business by an agent of the company to whose account such premiums are debited by the company.

"(b) 'Commissioner' means the Insurance Commissioner of this state.

"SECTION 3. Rules and regulations. The commissioner shall have such authority as he deems reasonably necessary to regulate home service insurance, and, to that end, to promulgate, adopt, and enforce reasonable rules and regulations necessary and proper to regulate home service insurance.

"SECTION 4. Deceptive Practices. Home service insurance deceptive practices are committing or performing any of the following in the marketing, selling, or servicing of home service insurance:

"(a) Demanding, charging, collecting, receiving or attempting an agent to demand, charge, collect or receive 'blind advances' whereby an agent collects premiums from a policyholder where no premiums are due and owed at the time collected and, without the knowledge of the policyholder, credits the premiums collected to coverage which the policyholder has or may purchase in the future;

"(b) Failure of the agent to remit premiums collected from policyholders to the company as they are collected;

"(c) Failure of the agent to provide to the policyholder, for each policy sold, a premium receipt book: (i) containing the names, addresses, and telephone numbers of the agent and the insurer; (ii) showing the paid to date, the date last paid, the amount of premium, the premium payor, the insured, and if different, the owner, the frequency of payment; and (iii) containing the agent's dated signature acknowledging receipt of each premium collected;

"(d) Taking or removing the premium receipt book from the possession of the policyholder by the agent or insurer without leaving a duplicate premium receipt book or other evidence of coverage with

the policyholder containing the information required by subdivision (c) of this subsection up to and including the date the premium receipt book is received by the agent or insurer;

"(e) Failure of an authorized supervisory official of the insurer to 'call the account' of the agent on a monthly basis whereby the agent's records are audited to determine whether the agent is in compliance with this subsection; or

"(f) Terminating a policy due to nonpayment of premiums that has been in force for twenty-four (24) months or one hundred and four (104) weeks without or unless and until the insurer has provided a written notice to the insured/owner and the premium payor at least two (2) weeks in advance, such notification shall include the date the policy will lapse, the amount of premium necessary to continue the policy and in the case of life insurance which contains nonforfeiture values the nonforfeiture values available under the contract.

"SECTION 5. Effective Date. Compliance with this Act shall be required for all home service insurance transactions on and after January 1, 1994.

"SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"SECTION 8. All laws and parts of laws in conflict with this act are hereby repealed."

**Publisher's Notes.** Acts 1993, No. 932, § 9 provided: "Compliance with this act shall be required for all home service insurance transactions on and after January 1, 1994."

**Effective Dates.** Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be



updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is

neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

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### **23-66-401. Title.**

This subchapter may be cited as the "Home Service Act".

**History.** Acts 1993, No. 932, § 1.

### **23-66-402. Definitions.**

As used in this subchapter:

(1) A "blind" is the collection of a premium from a policy owner or premium payor who is intentionally not made aware of the correct paid-to status of the policy for which the premium is to be applied because a premium intentionally was not properly recorded pursuant to § 23-66-405(1);

(2) "Commissioner" means the Insurance Commissioner of this state;

(3) "Customarily collected" means that in his or her ordinary course of business, the agent collects premiums for the policy on site at a payor's home or business;

(4)(A) "Customarily marketed, issued, or delivered" means that in his or her ordinary course of business, the agent markets, issues, or delivers the policy on site at a payor's home or business.

(B) "Customarily marketed, issued, or delivered" does not include any solicitation or sale made at the home or workplace of a person, if it will not thereafter be the ordinary course of business of the agent to either collect premiums from the person on site at his or her home or workplace, or regularly service the premium payor or policyowner on site at his or her home or workplace; and

(5) "Home service system of distribution" is a manner of selling insurance policies which are customarily marketed, issued, or delivered by an agent in person at a payor's home or business, or is a manner of collecting premiums in which premiums are customarily collected in person at a payor's home or business by an agent. This shall not include the sale of commercial policies, crop or hail policies, or term policies covering crops whether harvested or unharvested, or policies covering grain, hay, chemicals, or fertilizer.

**History.** Acts 1993, No. 932, § 2; 1997, No. 749, § 1.

**23-66-403. Rules and regulations.**

The Insurance Commissioner shall have such authority as he or she deems reasonably necessary to regulate the home service system of distribution, and, to that end, to promulgate, adopt, and enforce reasonable rules and regulations necessary and proper to regulate the home service system of distribution.

**History.** Acts 1993, No. 932, § 3; 1997, No. 749, § 5.

**23-66-404. Required practices.**

Each insurer engaged in the home service system of distribution of policies in this state shall:

(1)(A) Establish written procedures to audit agencies engaged in the home service system of distribution of policies in this state;

(B) File the audit procedures in effect each year with the annual statement or provide a certification with each annual statement that the procedures have been adopted;

(C) Conduct audits periodically, or in the manner as described by rules and regulations, at the field level or premium payor level which reasonably ensure that the premium payor's premium recording item or records accurately reflect the premium due date and premium paid-to status of the policy or policies purchased;

(D) Provide a receipt or record to the premium payor reflecting the amount of the premium paid, the date of payment, and the policy number, or other identifying characteristics, toward which the premium is paid if the premium receipt book or other premium recording record is unavailable for marking the premium payments of the payor; and

(E) Provide to a policy owner or premium payor upon request the current paid-to status of any and all policies owned within forty-five (45) days, and, in the event the records of the policy owner or premium payor differ, adjust the company records to credit the policy any previously uncredited payments for which a receipt or other reasonable evidence of payment is submitted by the policy owner; and

(2) With the delivery of the policy, provide notice in bold print with at least ten-point font or size which states:

(A) That a premium savings may be realized by a different or less frequent method of premium payment;

(B) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums; and

(C) The mailing address for payment of premiums to the company.

**History.** Acts 1993, No. 932, § 4; 1997, No. 749, § 2.

**23-66-405. Premiums.**

For every premium collected on a policy of property, casualty, life, or accident and health insurance in this state, the agent collecting or receiving such a premium shall:

(1) Furnish the payor with written evidence of payment at the time the premium is collected, which shall include the amount paid, the date paid, the date-paid-to status of the policy, the policy number or the identifying characteristics for which the payment will be credited, the signature or signed initials of the agent, and the office address and phone number of the insurer; and

(2) Remit to the insurer's home office or applicable district office the premium collected within ten (10) days of receipt from the premium payor or policy owner.

**History.** Acts 1993, No. 932, § 5; 1997, No. 749, § 3; 2001, No. 1603, § 28.

**23-66-406. Deceptive practices.**

The following activities, if committed intentionally, shall be deceptive acts under the Trade Practices Act, § 23-66-201 et seq., for companies or agents engaged in the home service system of distribution:

(1) The commission of a blind as defined by § 23-66-402;

(2) The collection of a premium which is not due from a premium payor or policy owner, and, without the knowledge of the premium payor or policy owner, the crediting of that premium to future coverage for a policy owner;

(3) The collection of a premium which is not due from a premium payor or policy owner, and, without the knowledge of the premium payor or policy owner, the crediting of that premium for a different policy owner;

(4) The use or transfer of any excess or unused funds remaining in the account of the premium payor or policy owner to procure or revive an insurance policy for a policy owner without the knowledge or authorization of the payor; and

(5) The collection of a premium by an agent who retains the premium for his or her own personal use.

**History.** Acts 1993, No. 932, § 6; 1997, No. 749, § 4.

**23-66-407. Private cause of action.**

No violation of this subchapter shall be deemed to give rise to a private cause of action.

**History.** Acts 1993, No. 932, § 7.



23-66-408. Violations.

(a) The Insurance Commissioner shall conduct all hearings held pursuant to allegations of violations of this subchapter pursuant to §§ 23-61-303 — 23-61-307.

(b) The commissioner may suspend for up to twelve (12) months, or may revoke or refuse to continue, any license issued by him or her which is the subject of an administrative hearing held pursuant to a violation of this subchapter.

(c) The commissioner may additionally impose upon the licensee an administrative penalty in the amount of not more than one thousand dollars (\$1,000) for each and every act or violation, but not to exceed an aggregate penalty of ten thousand dollars (\$10,000), unless the person knew or reasonably should have known the person was in violation of this subchapter, in which case, the penalty shall be not more than five thousand dollars (\$5,000) for each and every act or violation, but in an amount not to exceed an aggregate penalty of fifty thousand dollars (\$50,000) in any six-month period.

**History.** Acts 1993, No. 932, § 8.

SUBCHAPTER 5 — FRAUDULENT INSURANCE ACTS PREVENTION

SECTION.

- 23-66-501. Definitions.
- 23-66-502. Fraudulent insurance acts, interferences, and participation of convicted felons prohibited.
- 23-66-503. Fraud warning required.
- 23-66-504. Investigative authority of commissioner.
- 23-66-505. Mandatory reporting of fraudulent insurance acts.
- 23-66-506. Immunity from liability.

SECTION.

- 23-66-507. Confidentiality.
- 23-66-508. Creation and purpose of Criminal Investigation Division.
- 23-66-509. Other law enforcement of regulatory authority.
- 23-66-510. Insurer antifraud initiative.
- 23-66-511. Regulations.
- 23-66-512. Penalties.
- 23-66-513. Initial appointment investigation.

**Effective Dates.** Acts 2001, No. 580, § 29, provided: “Effective date. The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds that implementation of the act is not possible by July 1, 2002.”  
Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat.

1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline in regard to the Arkansas Insurance Department’s regulation of agents, brokers, surplus line brokers, and other applicants for individual and corporate licenses; and

that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come into compliance by the November 12, 2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 743, § 3: Mar. 13, 2001. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Insurance Code is in immediate need of revision to protect the insurance-buying consumers of this state; that the provisions of this act are essential to the successful operations and activities of the Insurance Fraud Investigation Division and the Worker's Compensation Fraud Investigation Unit of the Arkansas Insurance Department which are intended to provide protection to the insurance-buying consumers of this state; delay in the

effective date of this act would work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

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### 23-66-501. Definitions.

As used in this subchapter:

(1) "Actual malice" means knowledge that information is false, or reckless disregard of whether it is false;

(2) "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents, or employees of insurers or who are other persons authorized to act on their behalf;

(3) "Commissioner" means the Insurance Commissioner of this state;

(4) "Fraudulent insurance act" means an act or omission committed by a person who, knowingly and with intent to defraud, deceive, conceal, or misrepresent:

(A) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, a reinsurer, broker or its agent, or by a broker or agent, false information as part of, in

support of, or concerning a fact material to one (1) or more of the following:

(i) An application for the issuance or renewal of an insurance policy or reinsurance contract;

(ii) The rating of an insurance policy or reinsurance contract;

(iii) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

(iv) Premiums paid on an insurance policy or reinsurance contract;

(v) Payments made in accordance with the terms of an insurance policy or reinsurance contract;

(vi) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;

(vii) The financial condition of an insurer or reinsurer;

(viii) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;

(ix) The issuance of written evidence of insurance; or

(x) The reinstatement of an insurance policy;

(B) Solicits or accepts new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;

(C) Removes, conceals, alters, or destroys the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance;

(D) Embezzles, abstracts, purloins, or converts moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance;

(E) Transacts the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance;

(F) Attempts to commit, aids or abets the commission of, or conspires to commit the acts or omissions specified in this subsection;

(G) Issues false, fake, or counterfeit insurance policies, certificates of insurance, insurance identification cards, policy declaration pages or policy covers, or insurance binders or other temporary contracts of insurance;

(H) Possesses or possesses in order to distribute, solicit, sell, negotiate or effectuate false, fake, or counterfeit insurance policies, certificates of insurance, insurance identification cards, policy declaration pages or policy covers, or insurance binders or other temporary contracts of insurance to consumers, lienholders or loss payees, insurance agents or producers, or other persons or entities; or

(I) Possesses any device, software, or printing supplies utilized to manufacture false, fake, or counterfeit insurance policies, certificates of insurance, insurance identification cards, policy declaration pages or policy covers, or insurance binders or other temporary contracts of insurance;



(5)(A) "Insurance" means a contract or arrangement in which one undertakes to:

(i) Pay or indemnify another as to loss from certain contingencies called "risks", including through reinsurance;

(ii) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;

(iii) Pay an annuity to another; or

(iv) Act as surety.

(B) "Insurance" shall, for the purposes of this subchapter, be deemed to include any definition used in the Arkansas Insurance Code;

(6) "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in subdivision (5)(A) of this section. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer;

(7) "NAIC" means the National Association of Insurance Commissioners;

(8)(A) "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing;

(B) "Person" shall, for the purposes of this subchapter, be deemed to include any definition used in the Arkansas Insurance Code;

(9) "Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state; and

(10) "Reinsurance" means a contract, binder of coverage, including placement slip, or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

**History.** Acts 1997, No. 217, § 1; 2001, No. 1604, § 45; 2005, No. 1697, § 13.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and in-

formation helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## **23-66-502. Fraudulent insurance acts, interferences, and participation of convicted felons prohibited.**

(a) A person shall not commit a fraudulent insurance act.

(b) A person shall not knowingly interfere with the enforcement of the provisions of this subchapter or investigations of suspected or actual violations of this subchapter.

(c)(1) A person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance unless the person was pardoned, the conviction was expunged, or the person has obtained the written consent of the Insurance Commissioner pursuant to subsection (d) of this section.

(2) A person in the business of insurance shall not knowingly permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance unless the person was pardoned, the conviction was expunged, or the person has obtained the written consent of the commissioner pursuant to subsection (d) of this section.

(d)(1) A person described in subdivision (c)(1) of this section may participate in the business of insurance if written consent is obtained from the commissioner who, in the commissioner's sole discretion, may grant the written consent upon a finding that to do so would not endanger the public health, safety, and welfare.

(2) Notwithstanding any other provision in this subchapter, a person convicted in this state of a felony involving a fraudulent insurance act, dishonesty, or breach of trust after having obtained the written consent of the commissioner under this subsection shall have the fine and term of imprisonment for such a class of felony under the Arkansas Criminal Code enhanced to that of the next highest classification and shall be permanently disqualified from participating in the business of insurance in this state. If after obtaining the written consent of the commissioner under this subsection a person is convicted in a foreign jurisdiction of a felony involving a fraudulent insurance act, dishonesty, or breach of trust, the person shall be permanently disqualified from participating in the business of insurance in this state.

**History.** Acts 1997, No. 217, § 1; 1999, No. 313, § 1; 2005, No. 1994, § 460.

**Publisher's Notes.** The Arkansas Criminal Code, referred to in this section,

was originally enacted by Acts 1975, No. 280. Acts 1975, No. 280 is codified as set out in the note following § 5-1-101.

### **CASE NOTES**

#### **Dismissal Not Warranted.**

Where charges against defendant for alleging defrauding insurers were dismissed, this did not mandate a later dismissal of subsequently filed charges alleg-

ing Medicaid fraud under *res judicata*, issue preclusion, or § 5-1-113 because the crimes were not the same. *Dilday v. State*, 369 Ark. 1, 250 S.W.3d 217 (2007).

**23-66-503. Fraud warning required.**

(a) Claim forms, proofs of loss, or any similar documents, however designated, seeking payment or benefit pursuant to an insurance policy, and applications for insurance, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.”

(b) The lack of a statement as required in subsection (a) of this section does not constitute a defense in any prosecution for a fraudulent insurance act.

(c) Policies issued by unauthorized insurers shall contain a statement disclosing the status of the insurer to do business in the state where the policy is delivered or issued for delivery or the state where coverage is in force. The requirement of this subsection may be satisfied by a disclosure specifically required by § 23-65-307.

(d) The requirements of this section shall not apply to reinsurance proofs of loss or applications.

**History.** Acts 1997, No. 217, § 1.

this section applies shall have six (6)

**A.C.R.C. Notes.** Acts 1997, No. 217,  
§ 1, also provided: “All persons to whom

months from August 1, 1997, to comply  
with the requirements hereof.”

**23-66-504. Investigative authority of commissioner.**

The Insurance Commissioner may investigate suspected fraudulent insurance acts and persons engaged in the business of insurance.

**History.** Acts 1997, No. 217, § 1.

**23-66-505. Mandatory reporting of fraudulent insurance acts.**

(a) A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed shall provide to the Insurance Commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any person engaged in the business of insurance who knowingly fails to report as required by subsection (a) of this section shall be guilty of a Class A misdemeanor.

(c) Any other person having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(d)(1) Upon the request of the commissioner, a person engaged in the business of insurance shall provide to the commissioner all information the commissioner deems relevant pertaining to any investigation of a fraudulent act or related criminal violation.



(2) The refusal of any person to fully comply with the commissioner's request for information shall be grounds for the suspension, revocation, denial, or nonrenewal of any license or authority held by the person to engage in an insurance or other business subject to the commissioner's jurisdiction.

(3) Any proceeding for the suspension, revocation, denial, or nonrenewal of any license or authority shall be conducted pursuant to § 23-63-213.

**History.** Acts 1997, No. 217, § 1; 2005, No. 1697, § 14; 2005, No. 1994, § 230.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination

of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

### **23-66-506. Immunity from liability.**

(a) There shall be no civil liability for libel, slander, or any other cause of action imposed on, and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent insurance acts, if the information is provided to or received from:

(1) The Insurance Commissioner or the commissioner's employees, agents, or representatives;

(2) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(3) A person employed by or authorized by an insurer whose activities include the investigation or reporting of suspected fraudulent insurance acts when furnishing, disclosing, or requesting information on such suspected fraudulent insurance acts to or from a person employed by or authorized by other insurers or insurer organizations acting in the same capacity; or

(4) The National Association of Insurance Commissioners or its employees, agents, or representatives.

(b) Subsection (a) of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that subsection (a) of this section does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subsection (a) of this section.

**History.** Acts 1997, No. 217, § 1.

### **23-66-507. Confidentiality.**

(a) Notwithstanding any other provision of law, the documents and evidence provided pursuant to §§ 23-66-505 and 23-66-508 or obtained by the Insurance Commissioner in an investigation of suspected or actual fraudulent insurance acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action until the matter under investigation is closed by the Criminal Investigation Division with the consent of the commissioner.

(b) Subsection (a) of this section does not prohibit release by the commissioner of documents and evidence obtained by the division in an investigation of suspected or actual fraudulent insurance acts:

(1) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent insurance acts, or to the National Association of Insurance Commissioners; or

(3) At the discretion of the commissioner, to a person in the business of insurance that is aggrieved by a fraudulent insurance act.

(c) Release of documents and evidence under subsection (b) of this section does not abrogate or modify the privilege granted in subsection (a) of this section.

**History.** Acts 1997, No. 217, § 1; 2001, No. 1604, § 46; 2005, No. 1697, § 15.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination

of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

### **23-66-508. Creation and purpose of Criminal Investigation Division.**

(a)(1) The Criminal Investigation Division is established within the State Insurance Department.

(2) The Insurance Commissioner shall appoint the full-time supervisory and investigative personnel of the division, who shall be qualified by training and experience to perform the duties of their positions.

(3)(A) The commissioner shall designate the personnel assigned to the division, who, upon meeting the qualifications established by the Arkansas Commission on Law Enforcement Standards and Training,

shall have the powers of specialized law enforcement officers of the State of Arkansas for the purpose of conducting investigations under § 23-66-504 and any criminal violations related to those investigations.

(B) Personnel hired as specialized law enforcement officers shall have a minimum of three (3) years of certified law enforcement experience or its equivalent in national or military law enforcement experience as approved by the commission.

(4) The commissioner shall also appoint clerical and other staff necessary for the division to carry out its duties and responsibilities under this subchapter.

(b) It shall be the duty of the division to:

(1) Initiate independent inquiries and conduct independent investigations when the division has cause to believe that a fraudulent insurance act may be, is being, or has been committed;

(2) Review reports or complaints of alleged fraudulent insurance activities from federal, state, and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and the public to determine whether the reports require further investigation and to conduct these investigations; and

(3) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts.

(c) The division shall have the authority to:

(1)(A) Issue subpoenas to examine any individual under oath and to compel the production of records, books, papers, contracts, and other documents.

(B) Subpoenas shall be served in the same manner as if issued by a circuit court.

(C) If any individual fails to obey a subpoena issued and served pursuant to this subsection, upon application of the division, the Pulaski County Circuit Court or the circuit court of the county where the subpoena was served may issue an order requiring the individual to comply with the subpoena.

(D) Any failure to obey the order of the court may be punished by the court as contempt thereof;

(2) Administer oaths and affirmations;

(3) Share records and evidence with federal, state, or local law enforcement or regulatory agencies;

(4)(A) Make criminal referrals to prosecuting authorities.

(B) The prosecuting attorney of the judicial district where a criminal referral has been made shall have, for the purpose of assisting in the prosecution, the authority to appoint as special deputy prosecuting attorneys licensed attorneys in the employment of the division.

(C) The prosecuting attorney shall have the right and discretion to proceed against any person or organization on criminal referrals made hereunder, both organizational and individual liability being intended; and



(5)(A) Conduct investigations outside of this state.

(B) If the information the division seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the division to examine at the place where the information is located.

(C) The division may designate representatives, including officials of the state where the matter is located, to inspect the information on behalf of the division, and the division may respond to similar requests from officials of other states.

**History.** Acts 1997, No. 217, § 1; 2001, No. 743, § 2; 2005, No. 1697, § 16.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemina-

tion of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

### **23-66-509. Other law enforcement of regulatory authority.**

This subchapter shall not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(2) Prevent or prohibit a person from voluntarily disclosing information concerning insurance fraud to a law enforcement or regulatory agency other than the Criminal Investigation Division; or

(3) Limit the powers granted elsewhere by the laws of this state to the Insurance Commissioner or the division to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

**History.** Acts 1997, No. 217, § 1.

### **23-66-510. Insurer antifraud initiative.**

(a) Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts. Antifraud initiatives may include, but are not limited to:

(1) Fraud investigators, who may be insurer employees or independent contractors; or

(2) An antifraud plan submitted to the Insurance Commissioner. Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) Upon the written request of an insurer, the commissioner may grant an exemption from the requirements of this section if the

commissioner determines that such an exemption would not be detrimental to the interests of the public.

**History.** Acts 1997, No. 217, § 1.

### **23-66-511. Regulations.**

The Insurance Commissioner may promulgate reasonable rules and regulations deemed necessary by the commissioner for the administration of this subchapter.

**History.** Acts 1997, No. 217, § 1.

### **23-66-512. Penalties.**

A person who violates this subchapter is subject to the following:

(1)(A) Suspension or revocation of license, civil penalties of up to ten thousand dollars (\$10,000) per violation, or both.

(B) Suspension or revocation of license and imposition of civil penalties shall be pursuant to an order of the Insurance Commissioner issued under § 23-61-301 et seq.

(C) The commissioner's order may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter;

(2)(A) A person convicted of a violation of § 23-66-502 by a court of competent jurisdiction shall be guilty of a Class D felony.

(B) A person convicted of a violation of § 23-66-502 shall be ordered to pay restitution to persons aggrieved by the violation of this subchapter.

(C) Restitution shall be ordered in addition to a fine or imprisonment; and

(3) A person convicted of a felony violation of this subchapter pursuant to subdivision (2) of this section shall be disqualified from engaging in the business of insurance.

**History.** Acts 1997, No. 217, § 1.

### **23-66-513. Initial appointment investigation.**

(a)(1)(A) Prior to the approval of any application or request for appointment by an insurer or company to be added to the license obtained by an individual resident agent or producer who has had no previous appointments on his or her Arkansas license prior to this request, the insurer shall conduct or secure at its expense an investigation as to the applicant's identity, residence, experience, or instruction as to the kinds of insurance to be transacted, and as to the agent's or producer's character, financial condition, and financial history.

(B) The Insurance Commissioner may accept a background check performed by the National Association of Securities Dealers for any

required broker or producer background check required by this section.

(2) At a minimum, the investigation shall include the following information disclosed by the investigation:

(A) Whether the applicant has been convicted of a felony and, if so, the date and nature of the conviction, the name and location of the court, and the penalty imposed or other disposition of the case, for review in compliance with the provisions of § 23-66-502(c) and other applicable state or federal laws;

(B) Whether, at the time of the application, the agent or applicant is a named party in any lawsuit and, if so, the style of the lawsuit, a brief description of the litigation, and the name and location of the court;

(C) Whether a judgment for monetary damages has been entered against the applicant within the last five (5) years and, if so, the date of the judgment, the amount of the judgment, whether the judgment has been paid or otherwise satisfied, the name and location of the court, and the style of the case; and

(D) Such other information as the commissioner shall require.

(3) The forms and the requirements of this subsection shall not apply to:

(A) Any limited or restricted license as defined in § 23-64-502(7) or (9), any limited or restricted license that the commissioner may exempt, or any temporary license the commissioner may issue;

(B) Corporations, partnerships, limited liability companies, and partnerships licensed as insurance agencies under this chapter; and

(C) Any individual requesting a renewal license or requesting his or her second or subsequent insurer appointments added after the first-time license or appointment.

(b) The requirements for broker or producer background checks of subdivisions (a)(1) and (2) of this section shall apply to each first-time original license applicant for a resident broker's or producer's license in this state. However, those requirements shall not be required for any renewal broker's or producer's license, and all filings shall exclude appointment forms for first or renewal licenses for brokers or producers.

**History.** Acts 2001, No. 580, § 20; No. 1473, § 72, the amendment of this section by Acts 2003, No. 1203, § 14, supersedes the amendment of this section by § 53.

**A.C.R.C. Notes.** Pursuant to Acts 2003, Acts 2003, No. 1473, § 53.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.



**SUBCHAPTER 6 — INSURANCE SALES CONSUMER PROTECTION ACT**

## SECTION.

23-66-601. Short title.

23-66-602. Purpose.

23-66-603. Definitions.

23-66-604. Exemption.

23-66-605. Insurance in connection with a loan.

23-66-606. Depository institution or affiliates of a depository institution sales practices.

## SECTION.

23-66-607. Customer privacy.

23-66-608. Authorization to promulgate regulations.

23-66-609. Prohibited activities.

23-66-610. Commissioner's powers — Administrative proceedings.

**A.C.R.C. Notes.** References to “this chapter” in 23-66-210 and 23-66-513 may not apply to this subchapter, which was enacted subsequently.

**Effective Dates.** Acts 1997, No. 900, § 12: July 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act is necessary to regulate the business of insurance and to protect the interests of insurance consumers; and that for the effective administration of the law this act should become effective on July 1, 1997. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral pre-need laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part,

the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

**23-66-601. Short title.**

This subchapter may be cited as the “Insurance Sales Consumer Protection Act”.

**History.** Acts 1997, No. 900, § 1; 2001, No. 1728, § 3.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

**23-66-602. Purpose.**

The purpose of this subchapter is to regulate the business of insurance and protect the interests of insurance consumers.

**History.** Acts 1997, No. 900, § 2; 2001, No. 1728, § 3.

**23-66-603. Definitions.**

For the purpose of this subchapter:

(1) “Affiliate” means any company that controls, is controlled by, or is under common control with another company;

(2) “Customer” means a person who obtains, applies for, or is solicited to obtain insurance products primarily for personal, family, and household purposes;

(3) “Depository institution” means a bank or savings association and does not include an insurance company;

(4) “Insurance” means all policies or products defined or regulated as insurance pursuant to § 23-60-101 et seq. except:

(A) Credit life, credit accident and health, credit property, credit casualty, credit involuntary unemployment, mortgagor’s decreasing term life, and mortgagor’s accident and health and sickness insurance;

(B) Insurance placed by a financial institution in connection with collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance; and

(C) Private mortgage insurance;

(5) “Insurance information” means information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of a depository institution or an affiliate of a depository institution; and

(6) “Person” means any natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

**History.** Acts 1997, No. 900, § 3; 1999, No. 881, § 9; 2001, No. 1728, § 3; 2003, No. 1747, § 10.

**23-66-604. Exemption.**

The provisions of § 23-66-606 shall not apply to or affect in any way a broker-dealer licensed by the State of Arkansas when such a broker-dealer is conducting insurance sales activities on premises other than

depository institution or an affiliate of a depository institution premises.

**History.** Acts 1997, No. 900, § 7; 2001, No. 1728, § 3.

### **23-66-605. Insurance in connection with a loan.**

(a) The following shall apply when insurance is required as a condition of obtaining a loan or extension of credit:

(1)(A) No person, depository institution, or affiliate of a depository institution may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom the money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

(B) Further, no person, depository institution, or affiliate of a depository institution may reject an insurance policy solely because the policy has been issued or underwritten by a person who is not associated with the depository institution or affiliate when insurance is required in connection with a loan or extension of credit;

(2) The loan or extension of credit and related insurance transactions shall be completed through separate documentation; and

(3) A loan for premiums on required insurance, other than a loan for credit insurance premiums or flood insurance premiums, shall not be included in the primary credit without the written consent of the customer.

(b)(1)(A) As a condition for extending credit or offering any product or service that is equivalent to an extension of credit, no person, depository institution, or affiliate of a depository institution may require that a customer obtain insurance from a depository institution, an affiliate of a depository institution, or a particular insurer or producer.

(B) Nothing in this subchapter or § 23-60-101 et seq., shall be construed to prohibit depository institution or affiliate of a depository institution personnel from informing customers that insurance is required in order to obtain a loan or extension of credit or that loan or extension of credit approval is contingent upon the customers' obtaining acceptable insurance.

(2) Depository institution or affiliate of a depository institution personnel may also inform customers that insurance is available from the depository institution, an affiliate of a depository institution, or particular unaffiliated third parties, and indicate how to obtain additional information.

**History.** Acts 1997, No. 900, § 4; 2001, No. 1728, § 3; 2003, No. 1747, § 11.



**23-66-606. Depository institution or affiliates of a depository institution sales practices.**

The following requirements shall apply to insurance sales activities conducted by depository institutions, their employees, affiliates of a depository institution, and unaffiliated third parties conducting the insurance sales activities on behalf of a depository institution or affiliate of a depository institution that involves the use of a depository institution or affiliate of a depository institution brand name or on depository institution or affiliate of a depository institution's premises:

(1) DISCLOSURES.

(A) The following disclosures are required with respect to the solicitation of insurance products or policies and shall be made in writing, when practicable, in a clear and conspicuous manner prior to the sale:

(i) That the insurance product or policy is not insured by the Federal Deposit Insurance Corporation or insured by any other federal government agency;

(ii) That the insurance product or policy is not a deposit or obligation of or guaranteed by the lending depository institution or affiliate of a depository institution; and

(iii) When appropriate, that certain insurance products involve investment risks, including the possible loss of principal or loss of value.

(B)(i) When an application by a customer for a loan or other extension of credit from a depository institution or an affiliate of a depository institution is pending, and insurance is offered or sold to the customer or is required in connection with the loan or extension of credit by the depository institution or affiliate of a depository institution, a written disclosure shall be provided to the customer indicating that the customer's choice of insurer or producer shall not affect the credit decision or credit terms in any way, except that the depository institution or an affiliate of a depository institution may impose reasonable requirements concerning the credit worthiness of the insurer and the scope of coverage chosen.

(ii) A rejection of a policy furnished by the customer shall not be deemed unreasonable if it is based on uniformly applied reasonable standards relating to the extent of coverage required and the financial soundness and the services of an insurer. The standards shall not discriminate against any particular type of insurer, nor shall the standards call for rejection of a policy because it contains coverage in addition to that required in the credit transaction.

(C)(i)(a) The person, depository institution, or affiliate of the depository institution shall obtain written acknowledgement of the receipt of the disclosure required by this subdivision (1) from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy.

(b) If the solicitation is conducted by telephone, the person, depository institution, or affiliate of the depository institution shall obtain

an oral acknowledgement of receipt of the disclosure, maintain sufficient documentation to show that the acknowledgment was given by the customer, and make reasonable efforts to obtain a written acknowledgment from the customer.

(ii) If a customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the customer may retain or obtain later, the person, depository institution, or affiliate of the depository institution may provide the disclosure and obtain acknowledgement of the receipt of the disclosure from the customer using electronic media.

(D)(i) An affiliate of a depository institution is subject to the disclosure requirements of this subdivision (1) if it sells, solicits, advertises, or offers insurance products or annuities at an office of a depository institution or on behalf of a depository institution.

(ii) The disclosure requirements of this subdivision (1) apply only to a depository institution when an individual purchases, applies to purchase, or is solicited to purchase insurance products or annuities primarily for personal, family, or household purposes, and only to the extent that the disclosure would be accurate.

(E) For the purposes of this subdivision (1), a person sells, solicits, advertises, or offers insurance on behalf of a depository institution, whether at an office of the depository institution or another location, if at least one (1) of the following occurs:

(i) The person represents to the customer that the sale, solicitation, advertisement, or offer of the insurance is by or on behalf of a depository institution;

(ii) A depository institution refers a customer to the person who sells insurance, and the depository institution has a contractual arrangement to receive commissions or fees derived from the sale of insurance resulting from the referral; or

(iii) Documents evidencing the sale, solicitation, advertisement, or offer of insurance identify or refer to a depository institution; and

(2) **PHYSICAL LOCATION OF INSURANCE ACTIVITIES.** Insurance sales activities on depository institution or affiliate of a depository institution premises shall be conducted in a manner so as to minimize customer confusion by:

(A) Conducting the activities to the extent practicable in a location separate and distinct from the area where retail deposits routinely occur; and

(B) Where practicable, identifying the area where insurance activities are conducted with appropriate signage as to be easily distinguishable by the public as separate and distinct from deposit activities of the depository institution or affiliate of a depository institution.

**23-66-607. Customer privacy.**

No person, depository institution, or affiliate of a depository institution who lends money or extends credit may release, without the express consent of the customer, borrower, mortgagor, or purchaser:

(1) Insurance information of a customer relative to a policy which is required by the credit transaction, for the purpose of soliciting, selling, or replacing such insurance. This provision does not apply:

(A) In case of a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on an existing customer of the depository institution, or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer, or the release of information as otherwise authorized by state or federal law; and

(B) To the use or disclosure of insurance information to an officer, director, employee, agent, or affiliate of a depository institution; or

(2) Health information obtained from the insurance records of a customer for any purpose other than for its activities as a licensed producer.

**History.** Acts 1997, No. 900, § 6; 2001, No. 1728, § 3.

**23-66-608. Authorization to promulgate regulations.**

The Insurance Commissioner may promulgate regulations to effectuate the purposes of this subchapter.

**History.** Acts 1997, No. 900, § 8; 2001, No. 1728, § 3.

**23-66-609. Prohibited activities.**

No person, depository institution, or affiliate of a depository institution who lends money or extends credit may:

(1) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state is responsible for the insurance sales activity of or stands behind the credit of the person, depository institution, or its affiliate;

(2) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state guarantees any return on an insurance product or is a source of payment on any insurance obligation of or sold by the person, depository institution, or its affiliate;

(3) Solicit or sell insurance unless it maintains separate books and records relating to the insurance transactions, including all files relating to and reflecting consumer complaints; or

(4)(A) Pay or receive any commission, brokerage fee, or other compensation as a producer unless the person holds a valid producer's license for the applicable class of insurance.



(B) However, an unlicensed person may make a referral to a licensed producer provided that the person does not:

- (i) Sell, solicit, or negotiate insurance;
- (ii) Discuss specific insurance policy terms and conditions; or
- (iii) Make recommendations or offer advice concerning insurance policies or coverages.

(C)(i) The unlicensed person may be compensated for the referral.

(ii) However, in the case of a referral of a customer, the unlicensed person may be compensated only if the compensation is a fixed dollar amount for each referral that does not depend on whether the customer purchases the insurance product from the licensed producer.

(D) Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the depository institution may receive for each customer referral no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

**History.** Acts 2003, No. 1747, § 13.

### **23-66-610. Commissioner's powers — Administrative proceedings.**

(a) The Insurance Commissioner shall have the power to examine and investigate the insurance activities of depository institutions in order to determine whether a depository institution has been or is engaged in any unfair trade practice prohibited by this subchapter.

(b) The commissioner shall notify the appropriate bank regulatory agency of the commissioner's intent to examine or investigate a depository institution and advise the appropriate bank regulatory agency of the suspected violations of state law prior to commencing the examination or investigation.

(c) Administrative proceedings for persons not in compliance with this subchapter shall be held in accord with the procedures of §§ 23-66-209 — 23-66-213, subject to the following limitations or conditions:

(1)(A) If the person being investigated by the commissioner under subsection (a) of this section is a depository institution, the commissioner's authority to call a hearing for suspected violations of this subchapter is limited to the depository institution's insurance underwriting, sales, solicitation, and cross-marketing activities.

(B) The commissioner shall provide a copy of the notice of hearing to the appropriate bank regulatory agency when a depository institution is involved;

(2) If the person being investigated by the commissioner under subsection (a) of this section is a depository institution, the commissioner shall have the power to require the depository institution to produce books, papers, records, correspondence, or other documents that the commissioner deems relevant only to the inquiry regarding the insurance activities of the depository institution; and

(3) If practicable, the commissioner shall:

(A) Notify the appropriate bank regulatory agency before imposing a monetary penalty on a depository institution or suspending or revoking the depository institution's insurance license; and

(B) Provide to the appropriate bank regulatory agency a copy of the findings.

**History.** Acts 2003, No. 1747, § 13.

## **SUBCHAPTER 7 — DRUG ENFORCEMENT ADMINISTRATION REGISTRY NUMBER PROTECTION**

### **SECTION.**

23-66-701. Legislative findings and intent.

### **SECTION.**

23-66-702. Drug Enforcement Administration registry numbers.

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**A.C.R.C. Notes.** References to “this chapter” in 23-66-210 and 23-66-513 may not apply to this subchapter, which was enacted subsequently.

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### **23-66-701. Legislative findings and intent.**

The General Assembly hereby finds that registry numbers issued to physicians by the Drug Enforcement Administration are protected numbers not intended for use by insurance companies and health maintenance organizations. Pharmacists are prohibited by law from selling or dispensing controlled substances without a physician's Drug Enforcement Administration registry number, and disclosure of the registry number to insurers is unwarranted and inappropriate. The intent of this subchapter is to prohibit insurance companies and health maintenance organizations from requiring physicians, pharmacists, or others to disclose a physician's Drug Enforcement Administration registry number.

**History.** Acts 1999, No. 1302, § 1.

### **23-66-702. Drug Enforcement Administration registry numbers.**

(a) Health carriers shall not require physicians, pharmacists, or other persons or entities to disclose a physician's Drug Enforcement Administration registry number for the purposes of identification, payment to a pharmacist, reimbursement of a patient, or any other reason.

(b) “Health carrier” means any insurance company or health maintenance organization subject to the following laws:

(1) The Arkansas Insurance Code;

(2) Section 23-76-101 et seq., pertaining to health maintenance organizations; and

(3) Any successor laws of the foregoing.

(c) Nothing in this section shall be construed to prohibit a health carrier, as part of the credentialing process, from requesting evidence that the physician has a valid Drug Enforcement Administration certificate.

**History.** Acts 1999, No. 1302, § 2.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## CHAPTER 67

### RATES AND RATING ORGANIZATIONS

#### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. REGULATION OF INSURANCE RATES.
3. ARKANSAS WORKERS' COMPENSATION INSURANCE PLAN.
4. USE OF CREDIT INFORMATION IN PERSONAL INSURANCE ACT.
5. MALPRACTICE INSURANCE RATES.

**Publisher's Notes.** Former chapter 67, concerning rates and rating organizations, was repealed by Acts 1987, No. 959, § 1, with the exception of § 23-67-119 [now § 23-67-219]. The repealed sections were derived from the following sources:

23-67-101. Acts 1979, No. 732, § 2; A.S.A. 1947, § 66-3101.

23-67-102. Acts 1979, No. 732, § 3; A.S.A. 1947, § 66-3102.

23-67-103. Acts 1979, No. 732, § 4; A.S.A. 1947, § 66-3103.

23-67-104. Acts 1979, No. 732, § 20; A.S.A. 1947, § 66-3119.

23-67-105. Acts 1979, No. 732, § 17; A.S.A. 1947, § 66-3116.

23-67-106. Acts 1979, No. 732, § 5; A.S.A. 1947, § 66-3104.

23-67-107. Acts 1979, No. 732, § 6; A.S.A. 1947, § 66-3105.

23-67-108. Acts 1979, No. 732, § 7; 1981, No. 897, § 1; A.S.A. 1947, § 66-3106.

23-67-109. Acts 1979, No. 732, § 8; A.S.A. 1947, § 66-3107.

23-67-110. Acts 1979, No. 732, § 9; A.S.A. 1947, § 66-3108.

23-67-111. Acts 1979, No. 732, § 10; A.S.A. 1947, § 66-3109.

23-67-112. Acts 1979, No. 732, § 11; A.S.A. 1947, § 66-3110.

23-67-113. Acts 1979, No. 732, § 12; A.S.A. 1947, § 66-3111.

23-67-114. Acts 1979, No. 732, § 13; A.S.A. 1947, § 66-3112.

23-67-115. Acts 1979, No. 732, § 14; A.S.A. 1947, § 66-3113.

23-67-116. Acts 1979, No. 732, § 15; A.S.A. 1947, § 66-3114.

23-67-117. Acts 1979, No. 732, § 16; A.S.A. 1947, § 66-3115.

23-67-118. Acts 1979, No. 732, § 19; A.S.A. 1947, § 66-3118.

23-67-120. Acts 1979, No. 732, § 18; A.S.A. 1947, § 66-3117.

Acts 1987, No. 959, § 21, provided that rates and supplementary rate information lawfully in use on the effective date of the act could continue to be used thereafter unless subsequently disapproved. The act became effective six months after enactment.

#### RESEARCH REFERENCES

**Am. Jur.** 43 Am. Jur. 2d, Ins., §§ 30, 59 and § 826 et seq.

**C.J.S.** 44 C.J.S., Ins., § 92 and § 436 et seq.

**U. Ark. Little Rock L.J.** Survey—Insurance, 10 U. Ark. Little Rock L.J. 587.

Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.



## CASE NOTES

## ANALYSIS

Constitutionality.  
Antitrust Laws.

**Constitutionality.**

Former similar statutes did not violate any of the laws or Constitution of the State of Arkansas. *North Little Rock Transp. Co. v. Casualty Reciprocal Exch.*, 85 F. Supp. 961 (E.D. Ark. 1949), *aff'd*, 181 F.2d 174 (8th Cir. Ark. 1950) (decision under prior law).

**Antitrust Laws.**

Price-fixing activities of automobile insurance rating bureau in establishing rates, on file with State Insurance Commission (now State Insurance Department), was not a violation of Sherman Antitrust Act, as Congress has exempted from the provisions of the Sherman Act insurance to the extent such business is regulated by state statute. *North Little Rock Transp. Co. v. Casualty Reciprocal Exch.*, 85 F. Supp. 961 (E.D. Ark. 1949), *aff'd*, 181 F.2d 174 (8th Cir. Ark. 1950) (decision under prior law).

## SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

## SUBCHAPTER 2 — REGULATION OF INSURANCE RATES

## SECTION.

- 23-67-201. Purpose.
- 23-67-202. Definitions.
- 23-67-203. Scope.
- 23-67-204. Payment of dividends.
- 23-67-205. Penalties.
- 23-67-206. Exemptions.
- 23-67-207. Noncompetitive market.
- 23-67-208. Rate standards.
- 23-67-209. Rating criteria.
- 23-67-210. Rating plans.
- 23-67-211. Filing of rates and other rating information.
- 23-67-212. Procedural requirements.
- 23-67-213. Disapproval of rates.
- 23-67-214. Licensing of advisory organizations.
- 23-67-215. Insurers and advisory organizations — Prohibited activities.

## SECTION.

- 23-67-216. Advisory organizations — Permitted activities.
- 23-67-217. Advisory organizations — Filings.
- 23-67-218. Records and reports.
- 23-67-219. Workers' compensation and employers' liability insurance.
- 23-67-220. Examinations.
- 23-67-221. [Repealed.]
- 23-67-222. Administrative procedures.
- 23-67-223. Comparison data for private passenger automobile, homeowners multi-peril, and dwelling fire insurance policies.

**A.C.R.C. Notes.** Due to the addition of a new subchapter by Acts 1991, No. 561, subchapter 1 was created and reserved for general provisions, and the preexisting text of chapter 67, formerly §§ 23-67-101 — 23-67-120, has been designated as sub-

chapter 2.

**Effective Dates.** Acts 1987, No. 959, § 21: effective six months after enactment. Approved Apr. 14, 1987.

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act."

Acts 1993, No. 805, § 18: April 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the common law and statutory law of this state does not adequately address the matter of the issuance and regulation of motor vehicle service contracts; it is further found that legislation is necessary to allow for the marketing of

such contracts in a manner that is consistent with protection of the public which purchases such contracts and that such legislation should go into effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

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### 23-67-201. Purpose.

(a) This chapter shall be liberally construed to achieve the purposes stated in subsection (b) of this section, which shall constitute an aid and guide to interpretation but not an independent source of power.

(b) The purposes of this chapter are to:

(1) Promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;

(2) Prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(3) Promote price competition among insurers so as to provide rates that are responsive to competitive market conditions;

(4) Provide regulatory controls in the absence of competition;

(5) Improve availability, fairness, and reliability of insurance;

(6) Authorize essential cooperative action among insurers in the ratemaking process and to regulate that activity to prevent practices that tend to lessen substantially competition or to create a monopoly;

(7) Encourage the most efficient and economic marketing practices; and

(8) Require the providing of price and other information to enable consumers to purchase insurance suitable for their needs and to foster competitive insurance markets.

**History.** Acts 1987, No. 959, § 2.

### **23-67-202. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1)(A)(i) “Advisory organization” or “rate service organization” means any entity which either has two (2) or more member insurers or is controlled either directly or indirectly by two (2) or more insurers, licensed under § 23-67-214, and which assists insurers in ratemaking-related activities such as those enumerated in § 23-67-216.

(ii) Two (2) or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for the purpose of this definition.

(B) The term “advisory organization” shall not include a joint underwriting association prescribed by law, any actuarial or legal consultant, or any employee of an insurer;

(2) “Competitive market” means a market in which a reasonable degree of competition exists and which has not been found to be noncompetitive pursuant to § 23-67-207;

(3) “Commercial risk” means any kind of risk which is not a personal risk, as defined in subdivision (7) of this section;

(4) “Loss development” means the adjustment of losses as of some particular date to an ultimate settlement basis based on past maturity patterns;

(5) “Loss trending” means any procedure for projecting developed losses for the cost-level adjustment to the average date of loss for the period during which the policies are to be effective;

(6) “Noncompetitive market” means a market in which a reasonable degree of competition does not exist pursuant to the provisions of this chapter;

(7) “Personal risks” means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs;

(8) “Pool” means a voluntary arrangement, established on an ongoing basis, pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement;

(9) “Pure premium” means that part of the premium which is sufficient to pay losses and loss adjustment expenses only;



(10) “Residual market mechanism” means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded to applicants who are unable to obtain insurance through ordinary methods;

(11) “Rates” or “supplementary rate information” includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, and any other similar information needed to determine the applicable rate in effect or to be in effect; and

(12) “Supporting information” means:

(A) The experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer;

(B) The interpretation of any statistical data relied upon by the filer;

(C) Descriptions of methods used in making the rates; and

(D) Other information required by the Insurance Commissioner to be filed.

**History.** Acts 1987, No. 959, § 3.

### **23-67-203. Scope.**

This chapter applies to all kinds of insurance written on risks in this state by any insurers authorized to do business in this state, except:

(1) Life insurance;

(2) Annuities;

(3) Disability, including accident and health, insurance;

(4) Ocean marine insurance;

(5) Reinsurance;

(6) Aircraft insurance;

(7) Title insurance;

(8) Workers’ compensation and employers’ liability insurance, except that the following provisions shall apply to these lines: §§ 23-66-206; 23-67-202(1), (4)-(6), and (9)-(12); 23-67-204; 23-67-205; 23-67-208; 23-67-214; 23-67-215(a) and (c); 23-67-216; 23-67-218; 23-67-219; and the Publisher’s Note to Title 23, Chapter 67;

(9) Motor vehicle service contracts, for so long as the motor vehicle service contract providers’ exposures to their customers are fully insured by an insurer that is authorized to transact property and casualty insurance business in this state; or

(10) Surplus lines insurance.

**History.** Acts 1987, No. 959, § 4; 1989, No. 772, § 11; 1993, No. 805, § 13; 2001, No. 1555, § 10.

**Publisher’s Notes.** The reference in (8) to the Publisher’s Note to Chapter 67 of Title 23 may refer to the Publisher’s Note concerning Acts 1987, No. 959, § 21.

Acts 1993, No. 805, § 17, provided: “This act shall apply to motor vehicle service contracts sold on or after thirty (30) days after the effective date of this act.”

**23-67-204. Payment of dividends.**

Nothing in this chapter shall be construed to prohibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

**History.** Acts 1987, No. 959, § 7.

**23-67-205. Penalties.**

(a) Whenever the Insurance Commissioner shall have reason to believe that any person has violated any provision of this chapter, he or she shall issue and serve upon the person a statement of the alleged violations and a notice of hearing as provided by § 23-67-221 [repealed].

(b) If, after a hearing, the commissioner determines that the person has violated a provision of this chapter, the commissioner shall issue a written order which, in his or her discretion, may do one (1) or more of the following:

(1) Revoke the certificate of authority of the insurer or the license of the advisory organization;

(2) Suspend the certificate of authority of the insurer or the license of the advisory organization; or

(3) Require the payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation or a penalty of not more than ten thousand dollars (\$10,000) for each violation if the commissioner has found willful violations.

**History.** Acts 1987, No. 959, § 18.

**23-67-206. Exemptions.**

(a) In a competitive market, property and casualty insurance for commercial risks, excluding workers' compensation, employers' liability, and professional liability insurance, including, but not limited to, medical malpractice insurance, are exempted from the rate filing and review provisions set forth in this chapter.

(b) Risks or portions thereof which are not rated according to manuals, rating plans, or schedules including "a" rates, risks rated under the "referral to company" or "individual risk situations" rules, are exempted from the rate filing and review provisions set forth in this chapter. Insurers must maintain complete files on how they determined the rate for such risks and make these files available to the Insurance Commissioner upon request.

(c) The commissioner, upon his or her own initiative or upon request of any person, by order, may exempt any market, segment, or line from any or all of the provisions of this chapter if and to the extent that he or she finds the exemption necessary to achieve the purposes of this chapter.

**History.** Acts 1987, No. 959, § 17;  
1999, No. 458, § 1.

### **23-67-207. Noncompetitive market.**

(a) If the Insurance Commissioner has cause to believe that a reasonable degree of competition does not exist in a market, the commissioner shall hold a hearing. In determining whether a reasonable degree of competition exists, insurers operating within that market shall have the burden of establishing that a reasonable degree of competition exists within that market.

(b)(1) The commissioner shall consider relevant tests of competition pertaining to market structure, market performance, and market conduct, and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers.

(2) These tests may include, but are not limited to, the following:

(A) Size and number of insurers actively engaged in the market;

(B) Market shares and changes in market shares of insurers;

(C) Ease of entry into and exit from a given market;

(D) Underwriting restrictions; and

(E) Whether long-term profitability for insurers generally in the market is unreasonably high.

(c) After the hearing, the commissioner shall issue an order as to his or her findings. This order shall expire no later than one (1) year after it is effective as provided in the order.

**History.** Acts 1987, No. 959, § 5.

### **23-67-208. Rate standards.**

(a) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(b) A rate in a competitive market is assumed not to be excessive. A rate is excessive in a competitive or noncompetitive market if it is likely to produce a profit from Arkansas business that is unreasonably high in relation to past and prospective loss experience for that class of business which the filing affects or if expenses are unreasonably high in relation to services rendered.

(c) A rate is clearly inadequate if, together with the investment income attributable to it, it fails to satisfy projected losses and expenses in the class of business to which it applies.

(d)(1) A rate is not unfairly discriminatory in relation to another in the same class of business if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or with like expense factors but different loss exposures, if the rates reflect the differences with reasonable accuracy.



(2) A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among the risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

**History.** Acts 1987, No. 959, § 6.

### **23-67-209. Rating criteria.**

(a) Due consideration must be given to past and prospective loss and expense experience within and outside this state, to catastrophe hazards and contingencies, to events or trends within and outside this state, to loadings for leveling rates over a period of time, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors. All submissions for rate changes or supplementary rate changes must include this information with Arkansas experience shown as well as companywide experience for the past five (5) years for the class of business which this filing affects. The determination of the weighting of credibility assigned to Arkansas must be fully explained. If, within a particular class, the data is not sufficiently credible for Arkansas or companywide, and common classes are grouped together for rate-making purposes, all class codes utilized in developing credibility shall be shown as an exhibit in the filing, with Arkansas experience for each class affected shown separately. If significant trends within the state are utilized, a narrative describing the basis of the trend must be included.

(b) Risks may be classified in any reasonable way for the establishment of rates, except that no risks may be grouped by classifications based in whole or in part on race, color, creed, or national origin of the risk.

(c) The expense provisions included in the rates to be used by any insurer shall reflect the operating methods of the insurer and its actual and anticipated expense experience.

(d) The rates may contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration must be given to all investment income attributable to premiums and to the reserves associated with those premiums and to loss reserve funds.

**History.** Acts 1987, No. 959, § 6.

### **CASE NOTES**

#### **Loss Experience in Other State.**

In considering a petition for approval of lower fire insurance rates on cotton stored in "igloo-type" warehouses, consideration could not be given to loss experience with such warehouses in another state extend-

ing over a period of less than five years. *National Cotton Compress & Cotton Whse. Ass'n v. Atlantic Mut. Ins. Co.*, 242 Ark. 337, 413 S.W.2d 860 (1967) (decision under prior law).

**23-67-210. Rating plans.**

(a) Rates may be modified to produce premiums for individual risks in accordance with filed rating plans which establish standards for measuring variations in hazards or expense provisions. Those standards may measure differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The modification shall apply to all risks under the same or substantially the same circumstances or conditions.

(b) This provision does not apply to filed modification plans which may be offered to an insured including, but not limited to, retrospective rating plans and composite rating plans.

**History.** Acts 1987, No. 959, § 6.

**23-67-211. Filing of rates and other rating information.**

(a) FILINGS AS TO COMPETITIVE MARKETS.

(1)(A)(i) In a competitive market, every insurer shall file with the Insurance Commissioner all rates, supplementary rate information, and supporting information for risks which are to be written in this state.

(ii) The rates and information shall be filed twenty (20) days prior to the effective date.

(B) A filing shall be deemed to meet the requirements of this chapter and to become effective upon the expiration of the waiting period or sooner if approved by the commissioner.

(2)(A)(i) In a competitive market, if the commissioner determines after a hearing or by agreement that an insurer's rates require closer supervision because of the insurer's financial condition or its rating practices, the insurer shall file with the commissioner at least sixty (60) days prior to the effective date all rates and supplementary rate information and supporting information prescribed by the commissioner.

(ii) Upon application by the filer, the commissioner may authorize an earlier effective date.

(B) A filing shall be deemed to meet the requirements of this chapter and to become effective upon the expiration of the waiting period.

(b) FILINGS AS TO NONCOMPETITIVE MARKETS.

(1)(A) In a noncompetitive market, every insurer shall file with the commissioner all rates for that market. These rates, supplementary rate information, and supporting information required by the commissioner shall be filed at least sixty (60) days prior to the effective date.

(B) Upon application by the filer, the commissioner may authorize an earlier effective date.

(2) A filing shall be deemed to meet the requirements of this chapter and to become effective upon the expiration of the waiting period unless disapproved by the commissioner.

(c) If a private passenger automobile, homeowners multi-peril, or dwelling fire policy overall rate is increased under this section, then the commissioner shall publish notice of the rate increase and the overall percentage of the rate increase:

(1) On the State Insurance Department's website; and

(2) If the increase is twenty percent (20%) or greater, in a newspaper of general circulation in this state for three (3) consecutive business days.

(d) Effective June 30, 2006, if an insurer writing private passenger automobile, homeowners multi-peril, or dwelling fire insurance revises its rates and the revision results in a premium increase on a renewal policy and the insured will receive a rate increase other than due to a change in the nature of the risk insured, then the insurer shall mail or deliver to the insured and the agent of record not less than thirty (30) calendar days prior to the effective date of renewal a notice specifically stating the insurer's intention to increase the rate for the renewal.

(e) **ADHERENCE TO FILINGS.** Insurers must adhere to filings made under this section until the filings are amended or withdrawn.

**History.** Acts 1987, No. 959, § 7; 2005, No. 1697, § 17; 2007, No. 827, § 184.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in pur-

chasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

Although the term "rate" was used in the introductory language of subsection (c) of this section as added by Acts 2005, No. 1697, § 17, the intended term appears to have been "overall rate."

**Amendments.** The 2007 amendment rewrote (c).

## CASE NOTES

### Commissioner's Authority.

Although former statute gave the Insurance Commission (now Insurance Commissioner) the authority to regulate rates and to reduce rates, there was no provision giving it the power to fix a specific rate, and thus, order requiring that an

insurance rating and advisory service reduce automobile insurance rates was void. *Monroe v. Insurance Servs. Office*, 257 Ark. 1018, 522 S.W.2d 428 (1975); *Travelers Indem. Co. v. Monroe*, 257 Ark. 1029, 522 S.W.2d 431 (1975) (preceding decisions under prior law).

## 23-67-212. Procedural requirements.

(a)(1) Rates filed pursuant to this section shall be filed in such form and manner as prescribed by the Insurance Commissioner.

(2) An insurer may satisfy its obligation to file supplementary rate information or supporting information by filing a reference to a filing made by an advisory organization, with or without deviation.



(b) Each filing and supporting nonproprietary information filed under this chapter shall, as soon as filed, be open to public inspection. Notwithstanding the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq., information which is a trade secret or of a proprietary nature, or both, shall not be open to public inspection.

**History.** Acts 1987, No. 959, § 7; 1997, No. 1000, § 5.

### **23-67-213. Disapproval of rates.**

#### **(a) BASIS OF DISAPPROVAL.**

(1) The Insurance Commissioner may disapprove a rate without a hearing if the insurer fails to file the information required pursuant to this chapter.

(2) The commissioner may disapprove a rate without a hearing if he or she finds that the rate is excessive, inadequate, or unfairly discriminatory under § 23-67-208(b), (c), or (d).

#### **(b) DISAPPROVAL PROCEDURES.**

(1) If the commissioner disapproves a rate without a hearing, he or she shall send a notice to the insurer or rating organization stating wherein the filing is deficient in terms of the criteria in § 23-67-209. An insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing, within thirty (30) days after notice to the insurer or organization, may make written request to the commissioner for a hearing thereon. The commissioner shall hear the party or parties within twenty (20) days after receipt of the request and shall give not less than ten (10) days' written notice of the time and place of the hearing. The hearing shall be concluded within fifteen (15) days from its commencement, except that the commissioner, for good cause shown and with notice to the interested parties, may grant additional time, not to exceed thirty (30) days. Within fifteen (15) days after the hearing, the commissioner shall affirm, reverse, or modify his or her previous action, specifying his or her reasons therefor. Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of his or her previous action.

(2) For rates in effect pursuant to §§ 23-67-211 and 23-67-212, if the commissioner finds after a hearing that a rate is not in compliance with §§ 23-67-208 — 23-67-210, the commissioner shall issue an order specifying in what respects it so fails and stating when, within a reasonable period thereafter, the rates shall be deemed no longer effective.

(c) **CONSENT TO EXCESSIVE RATE.** Upon written consent of the insured stating his or her reasons therefor, a rate in excess of that provided by an otherwise applicable filing may be used on a specific risk. The "consent-to-rate" shall be on a form signed by the insured that includes a statement that the insured consents to a rate in excess of the filed rate. This form shall remain on file with the producing agent or broker.

**History.** Acts 1987, No. 959, § 8; 1999, No. 458, § 2.

### CASE NOTES

#### **Commissioner's Authority.**

Although former statute gave the Insurance Commission (now Insurance Commissioner) the authority to regulate rates and to reduce rates, there was no provision giving it the power to fix a specific rate, and thus, order requiring that an

insurance rating and advisory service reduce automobile insurance rates was void. *Monroe v. Insurance Servs. Office*, 257 Ark. 1018, 522 S.W.2d 428 (1975); *Travelers Indem. Co. v. Monroe*, 257 Ark. 1029, 522 S.W.2d 431 (1975) (preceding decisions under prior law).

#### **23-67-214. Licensing of advisory organizations.**

(a) No advisory organization shall provide any service relating to the rates of any insurance subject to this chapter, and no insurer shall utilize the services of the organization for those purposes unless the organization has obtained a license from the Insurance Commissioner.

(b) No advisory organization shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

(c)(1) An advisory organization applying for a license shall include with its application:

(A) A copy of its constitution, charter, or articles of organization, agreement, association, or incorporation and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;

(B) A list of its members and subscribers;

(C) The name and address of one (1) or more residents of this state upon whom notices, process affecting it, or orders of the commissioner may be served;

(D) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;

(E) License fees as provided by § 23-61-401; and

(F) Any other relevant information and documents that the commissioner may require.

(2) Every organization which has applied for a license shall notify the commissioner of every material change in facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.

(3) If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed and that all requirements of the law are met, the commissioner shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to lessen substantially the competition in any market.

(4) Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked, subject, however, to continuance of the license by the advisory organization each calendar year by:

(A) Payment on or before January 1 of a continuation fee as provided in § 23-61-401;

(B) Due filing of a letter requesting continuation of its license for the following calendar year; and

(C) Submission of information which may be required by the commissioner.

**History.** Acts 1987, No. 959, § 10.

### **23-67-215. Insurers and advisory organizations — Prohibited activities.**

(a) **MONOPOLIES.** No insurer or advisory organization shall attempt to monopolize or to combine or conspire with any other person to monopolize an insurance market or make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of unreasonably restraining trade or of substantially lessening competition in the business of insurance.

(b) **ADVISORY ORGANIZATIONS: PROHIBITED ACTIVITY.** In addition to the other prohibitions contained in this chapter, no advisory organization shall, except as specifically permitted under §§ 23-67-204, 23-67-211, 23-67-212, and 23-67-216:

(1) Compile or distribute recommendations relating to rates that include expenses, other than loss adjustment expenses, or profit except in lines designated by the Insurance Commissioner; or

(2) File any manual or plan of rates, policy fees, or supporting information on behalf of an insurer.

(c) An advisory organization may not have or adopt any rule, or exact any agreement, or formulate or engage in any program which would require any member, subscriber, or other insurer to:

(1) Interfere with the right of any insurer to develop its rates independent of that advisory organization;

(2) Utilize some or all of its services;

(3) Adhere to its rates, rating plan, rating systems, underwriting rules, or policy forms; or

(4) Prevent any insurer from acting independently.

**History.** Acts 1987, No. 959, §§ 11, 12.

### **23-67-216. Advisory organizations — Permitted activities.**

Any advisory organization, in addition to other activities permitted, is authorized to:

(1) Develop statistical plans, including territorial and class definitions;



(2) Collect statistical data from members, subscribers, or any other source;

(3) Prepare and distribute pure premium data, adjusted for loss development and loss trending, in accordance with its statistical plans;

(4) Prepare, distribute, and file rates and supplementary rate information except as prohibited by § 23-67-215(b). Those filings made by advisory organizations shall be for advisory purposes only and shall not be made on behalf of any insurer;

(5) Distribute information that is filed with the Insurance Commissioner and open to public inspection;

(6) Conduct research and on-site inspections in order to prepare classifications of public fire defenses;

(7) Consult with public officials regarding public fire protection as it would affect members, subscribers, and others;

(8) Conduct research and collect statistics in order to discover, identify, and classify information relating to cause or prevention of losses;

(9) Prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

(10) Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures;

(11) Collect, compile, and distribute past and current prices of individual insurers if that information is made available to the general public;

(12) File rates, supplementary rate information, and supporting information for residual market mechanisms; and

(13) Furnish any other services not prohibited by this chapter.

**History.** Acts 1987, No. 959, § 13.

### **23-67-217. Advisory organizations — Filings.**

Every advisory organization shall file with the Insurance Commissioner every advisory document pursuant to § 23-67-216 thirty (30) days prior to the effective date. The commissioner may extend the review period an additional thirty (30) days by written notice to the filer before the thirty-day period expires.

**History.** Acts 1987, No. 959, § 14.

### **23-67-218. Records and reports.**

(a) The Insurance Commissioner may adopt reasonable rules for use by companies to record and report to the commissioner rates and other information determined by the commissioner to be necessary or appropriate for the administration of this chapter and for the effectuation of its purposes.

(b) The commissioner may designate one (1) or more advisory organizations to assist him or her in gathering, compiling, and reporting the information. No insurer shall be required to record or report its

experience on a classification basis inconsistent with its own rating system.

**History.** Acts 1987, No. 959, § 15.

### **23-67-219. Workers' compensation and employers' liability insurance.**

With regard to workers' compensation and employers' liability insurance incidental thereto and written in connection therewith, the following provisions shall apply:

(1)(A) Every insurer shall file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan, and every modification of any of the foregoing which it proposes to use for workers' compensation and employers' liability insurance.

(B) Every insurer shall file with the commissioner every manual, minimum, class rate, rating schedule or rating plan, every other rating rule, and every modification of any of the foregoing which it proposes to use for workers' compensation and employers' liability insurance.

(C)(i) Every filing must be submitted for approval to the commissioner at least thirty (30) days prior to the proposed effective date.

(ii) Upon written request of the filer, the commissioner may authorize an earlier effective date.

(iii) If the commissioner does not have sufficient information to determine whether the filing meets the requirements of this section, the commissioner shall require the filer to furnish the information upon which it supports the filing. In this event, the proposed effective date shall not be less than thirty (30) days after the date the information is furnished.

(iv) As soon as submitted, each filing shall be open to public inspection, except information which is a trade secret or of a proprietary nature, or both. Notwithstanding the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq., information which is a trade secret or of a proprietary nature, or both, shall not be open to public inspection.

(v) The commissioner may require that the rate filing be submitted to an independent consulting actuary of his or her choice for review. The full expense of the consulting actuarial review shall be borne by the filing insurer or rate service organization.

(D) An insurer may satisfy its obligation to file by filing by reference to the rates and supplementary information, with or without deviation, filed by a licensed rate service organization with which the insurer is a member or subscriber. However, nothing contained in this section shall be construed as requiring any insurer to become a member of or subscriber to any rate service organization. Filings made by licensed rate service organizations shall be for advisory purposes only and shall not be made on behalf of any insurer. Reference filings made in this manner can only be changed by subsequent filings by the insurer.

(E) Upon the written application of the insured, stating his or her reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(F)(i) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided that the insurer or rate service organization that made the filing shall not be authorized to proceed under this subdivision (1)(F).

(ii) The application shall specify the grounds to be relied upon by the applicant.

(iii) If the commissioner finds that the application is made in good faith, that the applicant will suffer a legally cognizable injury if the grounds are established, and that the grounds otherwise justify holding a hearing, the commissioner shall, within thirty (30) days after receipt of the application, hold a hearing upon not less than ten (10) days' written notice to the applicant and to every insurer and rate service organization which made the filing.

(G) If, after the hearing, the commissioner finds that the filing does not meet the requirements of this section, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to all parties to the hearing. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(H) A manual, minimum, class rate, rating schedule, rating plan, rating rule, rating system, plan of operation, or any modification of any of the foregoing shall be disapproved if the rates thereby produced are excessive, inadequate, or unfairly discriminatory;

(2)(A)(i) Every member of or subscriber to a rate service organization shall adhere to the filings by the organization to which it has filed by reference, except that the insurer may make written application to the commissioner to file a deviation from the class rates, schedules, rating plans, or rules thereof.

(ii) This application shall specify the basis for the modification, and a copy shall also be sent simultaneously to the rate service organization.

(iii) In considering the application to file a deviation, the commissioner shall give consideration to the available statistics and the principles for ratemaking as provided in § 23-67-207 and subdivision (1)(H) of this section.

(iv) The commissioner shall approve the deviation for the insurer if he or she finds it to be justified, and it shall thereupon become effective.

(v) The commissioner shall disapprove the application if he or she finds that the deviation applied for does not meet the requirements of this chapter.



(B)(i) In order to preserve a uniform database, the commissioner may designate one (1) or more rate service organizations to assist him or her in gathering, compiling, and reporting information.

(ii) Insurers shall record their workers' compensation and employers' liability experience on a classification basis consistent with that of a rate service organization designated by the commissioner and shall report the experience to the designated rate service organization;

(3)(A) Every rate service organization and every insurer which makes its own rates for workers' compensation and employers' insurance, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, shall furnish to any insured affected by a rate made by it, or to the authorized representative of the insured, all pertinent information as to the rate.

(B)(i) Every rate service organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his or her authorized representative, on his or her written request to review the manner in which the rating system has been applied in connection with the insurance afforded him or her.

(ii) If the rate service organization or insurer fails to grant or rejects the request within thirty (30) days after it is made, the applicant may proceed in the same manner as if his or her application had been rejected.

(iii) Any party affected by the action of the rate service organization or the insurer on the request may, within thirty (30) days after written notice of the action, appeal to the commissioner.

(iv) The commissioner shall be furnished a written transcript of the proceedings before the rate service organization or the insurer, including a written memorandum of decision. The commissioner shall, within thirty (30) days after submission of the transcript and memorandum of decision, render his or her decision on the appeal, which decision shall be based on the transcript and memorandum of decision submitted. The commissioner shall promptly notify the appellant and the rate service organization or insurer in writing of his or her decision on the appeal.

**History.** Acts 1979, No. 732, § 21; 3120; Acts 1987, No. 697, §§ 1-4; Acts 1981, No. 906, § 1; A.S.A. 1947, § 66- 1991, No. 1123, § 5; 1997, No. 1000, § 6.

CASE NOTES

ANALYSIS

In General.  
Purpose.  
Rates.

In General.

The employer is required by the state to carry insurance, and the state dictates the rates to be charged. Wal-Mart Stores, Inc. v. Crist, 664 F. Supp. 1242 (W.D. Ark.

1987), rev'd, 855 F.2d 1326 (8th Cir. Ark. 1988).

#### **Purpose.**

Workers' compensation insurance has the salutary purpose of protecting employees, employers, and the public by providing a means by which injured workers may be compensated during the period of their inability to work caused by the injury so that they may continue to exist and feed their families. The public is protected because, hopefully, this prevents injured workers from becoming wards of the state maintained at the expense of the public. *Wal-Mart Stores, Inc. v. Crist*, 664 F. Supp. 1242 (W.D. Ark. 1987), rev'd, 855 F.2d 1326 (8th Cir. Ark. 1988).

#### **Rates.**

The purpose of this section's mandate that any rate or method of premium development for workers' compensation be on file with and approved by the Insurance Commissioner's office before it is offered is to protect workmen and the public by ensuring that carriers do not unfairly discriminate between employers or charge excessive or inadequate rates. This is a legitimate concern of the regulatory authorities. *Wal-Mart Stores, Inc. v. Crist*, 664 F. Supp. 1242 (W.D. Ark. 1987), rev'd, 855 F.2d 1326 (8th Cir. Ark. 1988).

Insured was obligated to pay premiums provided for in terms of the policy which

complied with the requirements of this section and could not avoid these premiums based upon a "side" agreement (whether such agreement is legal or illegal) that the premiums would not exceed a specified dollar amount despite the terms of the policy. Section 23-66-308 requires the insurer to charge the premiums shown on the policy and directs that the insured will not knowingly receive or accept any reduction in the premium unless there is a filing authorizing such a reduction, and an insured with an entire department dealing only with its insurance and an outside consulting firm for its insurance matters cannot later say that it did not "knowingly" accept the illegal reduction in premium. *Wal-Mart Stores, Inc. v. Crist*, 664 F. Supp. 1242 (W.D. Ark. 1987), rev'd, 855 F.2d 1326 (8th Cir. Ark. 1988).

Where, as written, policies did not embody the parties' actual agreement, the policies operated to deceive state regulatory authorities, because, in actuality, they embodied a rating schedule which the parties never planned to file with the state. Thus it would have been impossible for state regulators to test the policies to ascertain whether the rates charged were inadequate, excessive, or discriminatory, because the policies, on their face, did not reveal the true rates being charged. *Wal-Mart Stores, Inc. v. Crist*, 855 F.2d 1326 (8th Cir. Ark. 1988).

### **23-67-220. Examinations.**

(a) The Insurance Commissioner may examine any insurer, pool, advisory organization, or residual market mechanism as he or she deems necessary to ascertain compliance with this chapter.

(b) Every insurer, pool, advisory organization, and residual market mechanism shall maintain reasonable records of the type and kind reasonably adapted to its method of operation containing its experience or the experience of its members, including the data, statistics, or information collected or used in its activities. These records shall be available at all reasonable times to enable the commissioner to determine whether the activities of any advisory organization, insurer, or association comply with the provisions of this chapter. The records shall be maintained in an office within this state or shall be made available to the commissioner for examination or inspection at any time upon reasonable notice.

(c) The reasonable cost of an examination made pursuant to this section shall be paid by the examined party upon presentation of a detailed account of the costs.

(d) In lieu of any examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state pursuant to the laws of that state.

**History.** Acts 1987, No. 959, § 16.

### **23-67-221. [Repealed.]**

**Publisher's Notes.** This section, concerning consumer information, was repealed by Acts 1991, No. 799, § 2. The section was derived from Acts 1987, No. 959, § 9.

### **23-67-222. Administrative procedures.**

(a) Administrative procedures exercised by the Insurance Commissioner under this chapter shall be in accordance with §§ 23-61-303 — 23-61-306.

(b) Appeals from orders of the commissioner made under this chapter shall be made in accordance with § 23-61-307.

**History.** Acts 1987, No. 959, § 19.

### **23-67-223. Comparison data for private passenger automobile, homeowners multi-peril, and dwelling fire insurance policies.**

(a) The Insurance Commissioner shall compile computerized comparisons of premiums charged and coverage available, broken down by geographic area and by varying deductible levels, for private passenger automobile, homeowners multi-peril, and dwelling fire insurance policies for typical individuals and families.

(b) The commissioner shall make the information compiled under subsection (a) of this section available to consumers upon request.

(c) The commissioner shall engage in a public information campaign to make available to consumers information useful in choosing and maintaining private passenger automobile, homeowners multi-peril, and dwelling fire insurance coverage, including, but not limited to, information about certain policy definitions and provisions of which consumers should be particularly aware.

**History.** Acts 2005, No. 1697, § 18.

**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination

of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."



**SUBCHAPTER 3 — ARKANSAS WORKERS' COMPENSATION INSURANCE PLAN**

## SECTION.

- 23-67-301. Title.
- 23-67-302. Purpose.
- 23-67-303. Establishment, operation, and regulation.
- 23-67-304. Plan for coverage.
- 23-67-305. Mandatory participation in the Arkansas Workers' Compensation Insurance Plan.

## SECTION.

- 23-67-306. Employers entitled to insurance.
- 23-67-307. Cancellation of policy.
- 23-67-308. Failure of insurer to comply.
- 23-67-309. Appeal.
- 23-67-310. Rules and regulations.
- 23-67-311. Association policies.
- 23-67-312. Alternate preferred plan.
- 23-67-313. Competitive selection.

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**A.C.R.C. Notes.** Due to the addition of a new subchapter by Acts 1991, No. 561, subchapter 1 was created and reserved for general provisions, and the preexisting text of chapter 67, formerly §§ 23-67-101 — 23-67-120, has been designated as subchapter 2.

**Effective Dates.** Acts 1991, No. 561, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the workers' compensation risk pool is being transferred by this Act from the Workers' Compensation Commission to the Insurance Department; that the transfer should become effective at the beginning of the next fiscal year in order to comport with the appropriations for the next fiscal year for the Workers' Compensation Commission and the Insurance Department; that this Act may not go into effect on July 1, 1991 unless this emergency clause is adopted. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 1269, § 5: Apr. 21, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the issuance of workers' compensation policies covering contractors or associations of contractors who provide logging services was recently discontinued; that the discontinuation of such policies has placed a hardship on the logging

industry; that the logging industry is one of Arkansas' principal industries; that this act is designed to provide for the issuance of such policies and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1143, § 6: Apr. 7, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Workers Compensation insurance plan is in need of greater scrutiny and regulation by the State Insurance Commissioner in order to protect the workers covered by the plan; this act provides such additional authority to the Insurance Commissioner; and that this act should go into effect as soon as possible in order to provide the Insurance Commissioner with the tools to more adequately supervise and regulate the Arkansas Workers Compensation insurance plan. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

**23-67-301. Title.**

This subchapter shall be known and cited as the “Arkansas Workers’ Compensation Insurance Plan”.

**History.** Acts 1991, No. 561, § 1.

**23-67-302. Purpose.**

The purpose of this subchapter is to amend title 23 of this Code to provide for the establishment of a mandatory workers’ compensation insurance plan to assure coverage for employers who are in good faith entitled, but unable to procure, workers’ compensation insurance in this state, and to provide that the operation and regulation of the Arkansas Workers’ Compensation Insurance Plan shall be the responsibility of the Insurance Commissioner.

**History.** Acts 1991, No. 561, § 1.

**23-67-303. Establishment, operation, and regulation.**

The Insurance Commissioner shall be responsible for the establishment, operation, and regulation of the Arkansas Workers’ Compensation Insurance Plan pursuant to the provisions of this subchapter.

**History.** Acts 1991, No. 561, § 1.

**23-67-304. Plan for coverage.**

(a) The Arkansas Workers’ Compensation Insurance Plan shall give consideration to:

- (1) The need for adequate and readily accessible coverage;
- (2) Optional methods of improving the market affected;
- (3) The need for reasonable underwriting standards;
- (4) The need for adequate supervisory and servicing procedures to ensure proper operation of the plan;
- (5) The need to establish procedures that will have minimum interference with the voluntary market;
- (6) Distributing the obligations imposed by the plan and any profits or losses experienced by the plan equitably and efficiently among the participating insurers; and
- (7) Establishing procedures for applicants and participants to have their grievances reviewed and resolved.

(b)(1) The plan shall provide for the issuance of a policy covering the entire liability of the employer as to the business for which workers’ compensation insurance has been rejected.

(2) Nothing in this subsection shall modify or repeal the provisions of § 23-92-409.

(c) The rates and supplementary rate information of the plan shall meet the standards specified in § 23-67-208.

(d) The plan may obtain reinsurance for any part or all of its risks.

(e)(1)(A) At his or her discretion, the Insurance Commissioner is authorized to delegate all or any part of the commissioner's responsibility to establish and operate the plan.

(B) However, any such plan, or plan of operation, and any amendments thereto must receive the prior approval of the commissioner.

(2) Any person or entity to whom the establishment, implementation, or operation of the plan is delegated pursuant to this subsection shall file with and obtain the approval of the commissioner as to all policy forms, rates, or supplementary rate information necessary to effectuate the plan.

(3)(A) In delegating all or part of the commissioner's responsibility, the commissioner shall not approve any plan or filing that abrogates or restricts his or her authority to select the plan administrator or servicing carriers.

(B) The commissioner shall competitively select the organization or organizations to whom the responsibility of plan administrator shall be delegated.

(C) If the administration of the plan is delegated, the plan administrator or administrators shall have an office in Arkansas adequately staffed, outfitted, and maintained to provide the plan services delegated.

(D) The commissioner shall specify duties and functions of plan administrators and may structure and delegate administrative functions separately such as, but not limited to, rates, forms, and statistics for the best operation of the plan.

(4) Under the provisions of this subsection, the commissioner shall vigorously promote competition for the designation of the plan administrator and servicing carrier for the most effective operation of the plan.

(5)(A) The office in Arkansas is established to improve services provided by the plan, to promote and secure courteous and timely service, and to assure that the minimum standards as provided under subdivision (f)(2) of this section are met.

(B) The office in Arkansas shall also assist employers or agents with questions, problems, or complaints pertaining to the servicing carriers and secure and expedite prompt and fair treatment to employers for servicing carrier errors and service failures.

(6)(A) The Arkansas office manager shall have the authority to intervene with servicing carriers to secure an adequate level of service and prevent servicing carriers from imposing unreasonable demands or actions.

(B) The office manager shall keep a record of all employer or agent problems and complaints by a servicing carrier, including a description of the problem. This record shall be provided to the commissioner within sixty (60) days of each calendar year or upon the request of the commissioner.

(C) The manager shall promptly notify the commissioner of any problems upon a request by an employer.



(f)(1)(A) In order to promote competition and improve servicing carrier performance, the commissioner shall competitively select those servicing carriers who shall serve the plan.

(B) Any insurer licensed to transact workers' compensation and employers' liability insurance in Arkansas may apply for selection as a servicing carrier, but if an adequate number of qualified insurers do not apply, the commissioner may appoint any such insurer, as needed, to serve as a servicing carrier.

(2) All servicing carriers shall be subject to the following minimum standards:

(A) Each insurer shall continually employ such number of qualified administrative personnel and dedicate such equipment and facilities to the administration of the plan as the commissioner, in his or her reasonable discretion, deems adequate to service the needs of the plan; and

(B) Each such insurer shall comply with the following specific service or performance standards and such further standards as the commissioner may by rule and regulation provide:

(i) Provide a level of service comparable to that provided to employer-insureds in its voluntary workers' compensation line of business and assure the same by putting into effect internal administrative procedures, which shall assure that such is the case;

(ii) Maintain with the commissioner a list of responsible management personnel of the insurer qualified to make administrative decisions on the insurer's behalf concerning policies issued within the plan;

(iii) Keep the commissioner continually advised of the address and telephone number of the insurer's office servicing the plan on its behalf;

(iv) Maintain a toll-free telephone number or numbers adequate to service the plan and keep the commissioner, employers, and agents continually apprised of same;

(v)(a) Maintain its billing and rating procedure in timely compliance with orders of the commissioner.

(b) In particular, no insurer shall ever purport to effect a retroactive rate adjustment based upon a succeeding rate filing unless the insurer has specifically included within its policies a specific notice of pending rate change.

(c) No insurer shall fail to physically implement any rate change later than sixty (60) days of the date the order effecting the change is entered;

(vi) Such other service or performance standards, including, but not limited to, matters relating to loss experience, safety and loss control success, and profitability as the commissioner shall by rule and regulation prescribe; and

(vii) Such further standards as the commissioner may by rule and regulation provide.

(g) The commissioner is vested with the power and the reasonable discretion, after notice and hearing, to impose upon any servicing

carrier not meeting the standards herein prescribed or set forth by rule and regulation an administrative fine or penalty in the sum of not more than one thousand dollars (\$1,000) for each such violation of standards. The commissioner shall use this authority to discourage unreasonable or unfair actions by the servicing carriers.

(h) In considering performance of servicing carriers, the commissioner shall require the plan administrator to:

(1) File with the State Insurance Department quarterly results of the plan, including, but not limited to, premiums written and earned, losses paid, incurred losses, and administration and servicing carrier allowances; and

(2) File with the department annually the performance review and plan results of each plan servicing carrier.

(i)(1) Servicing carriers may join cooperatively with other licensed insurers or general business corporations for the purpose of satisfying their duties as servicing carriers, including, but not limited to, claim review and payment, and loss control and safety functions.

(2) The commissioner shall actively encourage additional financially sound licensed carriers or combinations of licensed carriers to join together as joint venturers with shared responsibilities for servicing functions and, also, to utilize the services of such claim, safety, and other service organizations as reasonably necessary to provide the best servicing carrier service economically possible.

(j) The commissioner shall establish within the plan an alternate preferred plan for employers who have carried workers' compensation insurance continually for at least four (4) policy years and who have had better than average loss experience and meet such additional reasonable standards as the commissioner shall by rule and regulation prescribe.

(k)(1) The commissioner shall by rule and regulation establish a performance plan related to the aforementioned service or performance standards and others to be promulgated with incentives and penalties to improve servicing carrier performance.

(2) The performance plan shall provide for up to thirty-three percent (33%) of the servicing carrier's remuneration to be based on performance.

(3) The servicing carrier performance plan shall provide an annual basis for penalties on carriers performing below standard to the extent of their underperformance under the criteria as hereinafter established by rule and regulation up to thirty-three percent (33%) of their remuneration.

(4) These penalties shall be distributed as incentives to carriers performing at or above standard up to thirty-three percent (33%) of their remuneration.

(5)(A)(i) The commissioner shall conduct a comprehensive performance review of the plan administrator as often as the commissioner deems advisable, which shall not be less frequent than one (1) time every five (5) years to the extent necessary for the proper operation of the plan.

(ii) The commissioner shall conduct a performance review of each servicing carrier as often as the commissioner deems advisable in order to assure adequate levels of service.

(B) This comprehensive performance review shall be conducted independently of any other performance review conducted by an organization owned or controlled by the insurance carriers.

(C) A report of this review and action taken to improve plan performance shall be made to the Legislative Council and the interim House Committee on Insurance and Commerce and the interim Senate Committee on Insurance and Commerce no later than September 1 after the calendar year reviewed.

**History.** Acts 1991, No. 561, § 1; 1993, No. 1155, § 1; 1997, No. 1143, § 1; 2001, No. 1721, § 1; 2003, No. 1750, § 7[6].

codified as a note under this section and § 23-67-306. It is now codified as § 23-67-313.

**A.C.R.C. Notes.** Acts 1993, No. 1155, § 3, before its amendment in 1997, was

**Publisher's Notes.** Acts 2003, No. 1750 did not contain a Section 2.

### **23-67-305. Mandatory participation in the Arkansas Workers' Compensation Insurance Plan.**

(a) All insurers licensed to transact workers' compensation and employers' liability insurance in this state, as defined in § 23-62-105(a)(3) and who have qualified to transact workers' compensation insurance pursuant to § 11-9-302(a) shall participate in the equitable apportionment among them of risks eligible for the Arkansas Workers' Compensation Insurance Plan.

(b) Participation in the plan expenses, profits, and losses shall be in the proportion that the net direct workers' compensation insurance premiums of each member written in this state during the preceding calendar year bears to the aggregate net direct workers' compensation insurance premiums of all members of the plan written in this state during the preceding calendar year.

**History.** Acts 1991, No. 561, § 1.

### **23-67-306. Employers entitled to insurance.**

(a) Any employer required to secure the payment of compensation under the provisions of § 11-9-404(a)(1) or any similar federal law shall be entitled to insurance under the provisions of this subchapter, provided:

(1) The employer pays his or her premium based upon the premium payment rules approved by the Insurance Commissioner;

(2) The employer has complied with all effective laws, orders, rules, or regulations made by public authorities relating to the welfare, health, and safety of employees;

(3) The employer is not in default of premium payments owed for workers' compensation insurance. Provided, however, that no employer shall be deemed to be in default of a premium payment if all of the sum



by which he or she is alleged to be in default is properly attributable to a good faith, bona fide dispute between the insurer and the employer over the accuracy or legality of an audit of payroll performed by or at the request of the insurer, and which dispute is in formal process of resolution as provided in § 23-67-219(3). All such disputes shall be resolved in the manner set forth in § 23-67-219(3)(B).

(b) In order to promote competition and improve servicing carrier performance, an employer applying for coverage or on renewal in the Arkansas Workers' Compensation Insurance Plan may strike six (6) servicing carriers, not to exceed a maximum of one-half (½) of the eligible servicing carriers, from the list of eligible servicing carriers to which the employer can be assigned.

**History.** Acts 1991, No. 561, § 1; 1993, No. 1155, § 2. codified as a note under this section and § 23-67-304. It is now codified as § 23-67-

**A.C.R.C. Notes.** Acts 1993, No. 1155, § 3, before its amendment in 1997, was 313.

### **23-67-307. Cancellation of policy.**

If, after the issuance of a policy providing insurance pursuant to the provisions of this subchapter, the insurer which issued the policy finds that the employer to whom the policy was issued is not, or has ceased to be, entitled to the insurance, the insurer shall have the right to cancel the policy in accordance with § 11-9-408(b).

**History.** Acts 1991, No. 561, § 1.

### **23-67-308. Failure of insurer to comply.**

If any insurer refuses or neglects to comply with the provisions of this subchapter or with any order or ruling made by the Insurance Commissioner pursuant to this subchapter, the insurer shall be subject to the administrative penalties provided for in the Arkansas Insurance Code.

**History.** Acts 1991, No. 561, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-67-309. Appeal.**

Any person aggrieved by an order or ruling made by the Insurance Commissioner under the provisions of this subchapter shall have the right to appeal the order or ruling pursuant to § 23-61-307.

**History.** Acts 1991, No. 561, § 1.

**23-67-310. Rules and regulations.**

The Insurance Commissioner is authorized to promulgate such reasonable rules and regulations as are necessary to carry out the provisions of this subchapter.

**History.** Acts 1991, No. 561, § 1.

**23-67-311. Association policies.**

Under such rules and regulations as shall be adopted by the Insurance Commissioner, and notwithstanding other provisions of this chapter, the commissioner is given the authority in the Arkansas Workers' Compensation Insurance Plan to allow the issuance of group or association workers' compensation insurance policies to logging contractors or dealers as sponsors. The policies may, in turn, insure for workers' compensation and employers' liability purposes no fewer than five (5) independent contractors who provide logging services to the sponsoring contractor or dealer. Provided, however, that such association or group coverage be made available on a nondiscriminatory basis to all other industries if the commissioner rules that the coverage is reasonably applicable to that industry and economically sound with respect to the plan.

**History.** Acts 1993, No. 1269, § 1.

**23-67-312. Alternate preferred plan.**

(a) The Insurance Commissioner shall establish within the Arkansas Workers' Compensation Insurance Plan an alternate preferred plan for employers, including logging or pulpwood dealers or contractors, who have carried workers' compensation insurance coverage continuously for at least four (4) policy years and who have had better than average loss experience and meet such additional reasonable standards as the commissioner shall by rule and regulation prescribe.

(b) Such an alternate preferred plan shall address the issues of deductibles and deposit premiums and make such provisions and allowances with respect thereto which are economically sound and in the best interest of the plan and the industries affected.

**History.** Acts 1993, No. 1269, § 1.

**23-67-313. Competitive selection.**

(a) The Insurance Commissioner shall make a good faith effort to comply with the intent of the provisions requiring competitive selection of the administrator of the Arkansas Workers' Compensation Insurance Plan and servicing carriers. The administrator and servicing carriers shall be competitively selected no less often than every three (3) years. Consideration for the administrator and servicing carriers shall include cost, finances, operating and service capabilities, and the record of

service and other factors deemed necessary for the effective and proper operation of the plan. The commissioner may suspend formal bidding for the administrator provided that:

(1) The commissioner has sought and compared other administrative services available;

(2) The commissioner deems there to have been in the interim a satisfactory improvement in administrator and servicing carrier performance;

(3) The commissioner judges continuation of the present administrator subject to the modifications herein set forth and to hereafter be promulgated by rule and regulation to be in the best interests of Arkansas;

(4) Coverage and service is adequately and properly provided to Arkansas employers entitled to insurance, and coverage is provided in other states for employees of Arkansas employers to the extent possible and the proper coverage is in the best interests of the employers and plan operations. Adequate coverage of employees while working on a temporary or occasional basis in other states is essential to Arkansas employers and employees; and

(5) The administrator has an office in Arkansas and the office has the staff and authority necessary to properly serve Arkansas employers and the commissioner in accordance with the provisions of this act.

(b) The commissioner shall review the plan operations to ensure compliance with this act. The commissioner shall review and report to the Legislative Council and the Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce by September 1 of each year, with the first report to be submitted no later than September 1, 1997, including, but not limited to, the following information:

(1) Competitive selection of the administrator and servicing carriers;

(2) Plan operating performance and service in accordance with the intent of this act, including performance reviews of the administrator, servicing carriers, and plan regulations;

(3) Proper authority and independence of the Arkansas office to properly perform and secure prompt, fair, and reasonable service as required by this act; and

(4) Coverage provided by the plan in other states, including evidence providing that carriers promptly provide coverage for employees of Arkansas employers working in other states as provided in this act.

(c) The commissioner is encouraged to hold public hearings as needed to assist in achieving the objectives of the act and to assist with the review and report provided to the Legislative Council and the Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce.

**History.** Acts 1993, No. 1155, § 3; concomitant codification as this section in 1997, No. 1143, § 2.

**Publisher's Notes.** Acts 1993, No. 67-304 and 23-67-306.

1155, § 3, prior to its amendment and **Meaning of "this act".** Acts 1993, No.



1155, codified as §§ 23-67-304 and 23-67-306.

## **SUBCHAPTER 4 — USE OF CREDIT INFORMATION IN PERSONAL INSURANCE ACT**

### **SECTION.**

23-67-401. Title.

23-67-402. Purpose.

23-67-403. Scope.

23-67-404. Definitions.

23-67-405. Use of credit information.

23-67-406. Dispute resolution and error correction.

23-67-407. Initial notification.

23-67-408. Adverse action notification.

23-67-409. Filing.

### **SECTION.**

23-67-410. Indemnification.

23-67-411. Sale of policy term information by consumer reporting organization.

23-67-412. Fair Credit Reporting Act.

23-67-413. Individual underwriting allowed.

23-67-414. Regulations.

23-67-415. Annual report regarding personal insurance.

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**Effective Dates.** Acts 2003, No. 1452,  
§ 2: Jan. 1, 2004, by its own terms.

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### **23-67-401. Title.**

This subchapter shall be known and may be cited as the “Use of Credit Information in Personal Insurance Act”.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-402. Purpose.**

The purpose of this subchapter is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of the information.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-403. Scope.**

This subchapter applies to personal insurance and not to commercial insurance or any other type of insurance.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-404. Definitions.**

For the purposes of this subchapter:

(1) “Adverse action” means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of personal insurance;

(2) "Affiliate" means any company that controls, is controlled by, or is under common control with another company;

(3) "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer;

(4) "Consumer" means an insured whose credit information is used or whose credit score is calculated in the underwriting or rating of a personal insurance policy or an applicant for the policy;

(5) "Consumer reporting agency" means any person who for monetary fees, dues, or on a cooperative nonprofit basis regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties;

(6)(A) "Credit information" means any credit-related information derived from a credit report or found on a credit report itself.

(B) Information that is not credit-related shall not be considered "credit information" regardless of whether it is contained in a credit report or in an application or is used to calculate a credit score;

(7)(A) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity that is used or expected to be used or collected, in whole or in part, for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(B) Loss history reports and driving history reports are not considered to be credit reports;

(8) "Credit score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based solely on credit information for the purpose of predicting the future insurance loss exposure of an individual applicant or insured; and

(9) "Personal insurance" means private passenger automobile, homeowners, motorcycle, mobile home owners, noncommercial dwelling fire insurance, noncommercial farm owners, boat, personal watercraft, snowmobile, and recreational vehicle policies.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-405. Use of credit information.**

An insurer authorized to do business in Arkansas that uses credit information to underwrite or rate risks shall not:

(1) Use a credit score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

(2) Deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subdivision (1) of this section;

(3) Base an insured's renewal rates for personal insurance solely upon credit information without consideration of any other applicable factor independent of credit information;

(4) Take an adverse action against a consumer solely because he or she does not have a credit card account without consideration of any other applicable factor independent of credit information;

(5) Consider an absence of credit information or an inability to calculate a credit score in underwriting or rating personal insurance unless the insurer does one (1) of the following:

(A) Treats the consumer as otherwise approved by the Insurance Commissioner if the insurer presents information that such an absence or inability relates to the risk for the insurer;

(B) Treats the consumer as if the applicant or insured had neutral credit information as defined by the insurer; or

(C) Excludes the use of credit information as a factor and uses only other underwriting criteria;

(6) Take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or a credit score calculated within ninety (90) days prior to the date the policy is first written or renewal is issued;

(7) Use credit information unless not later than thirty-six (36) months following the last time that the insurer obtained current credit information for the insured the insurer recalculates the credit score or obtains an updated credit report. Regardless of the requirements of this subdivision (7):

(A)(i) Upon the written request of a consumer, the insurer shall reunderwrite and rerate the policy based upon a current credit report or credit score.

(ii) An insurer need not recalculate the credit score or obtain the updated credit report of a consumer or reunderwrite or rerate a policy more frequently than one (1) time in a twelve-month period;

(B) The insurer shall have the discretion to obtain current credit information prior to any renewal before the end of the thirty-six (36) months;

(C) No insurer need obtain current credit information for an insured despite the requirements of subdivision (7)(A) of this section if one (1) of the following applies:

(i) The insurer is treating the consumer as otherwise approved by the commissioner;

(ii)(a) The insured is in the most favorably priced rating tier of the insurer within a group of affiliated insurers.

(b) However, the insurer shall have the discretion to order an updated credit report;

(iii)(a) Credit was not used for underwriting or rating the insured when the policy was initially written.

(b) However, the insurer shall have the discretion to use credit information for underwriting or rating the insured upon renewal;



(iv) The insurer reevaluates the insured beginning no later than thirty-six (36) months after inception and thereafter based upon other underwriting or rating factors excluding credit information; or

(v) If credit scoring is not used at renewal; or

(8) Use the following as a negative factor in any credit-scoring methodology for the purpose of underwriting or rating a policy of personal insurance:

(A) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information;

(B) Inquiries relating to insurance coverage if so identified on a consumer's credit report;

(C) Medical collection accounts;

(D) Multiple-lender inquiries if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty (30) days of one another unless only one (1) inquiry is considered; or

(E) Multiple-lender inquiries if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty (30) days of one another unless only one (1) inquiry is considered.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-406. Dispute resolution and error correction.**

(a) If it is determined through the dispute resolution process set forth in section 1681i(a)(5) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., that the credit information of a current insured was incorrect or incomplete and if the insurer receives written notice of the determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer within thirty (30) calendar days of receiving the notice.

(b) After reunderwriting or rerating the insured, the insurer shall make any necessary adjustments consistent with its underwriting and rating guidelines.

(c) If an insurer determines that the insured has overpaid a premium, the insurer shall refund to the insured the amount of overpayment.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-407. Initial notification.**

(a)(1) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose either on the insurance application or at the time the insurance application is taken that it may obtain credit information in connection with the application.

(2) The disclosure shall be either written or provided to an applicant in the same medium as the application for insurance.

(3) The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if the insured has previously been provided a disclosure statement.

(b) Use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based score based on the information contained in that credit report. We may use a third party in connection with the development of your credit score."

**History.** Acts 2003, No. 1452, § 2.

### **23-67-408. Adverse action notification.**

If an insurer takes an adverse action based upon credit information, the insurer shall:

(1) Provide the consumer the name, address, and phone number of the person or division at the insurance company responsible for handling applicant or policyholder questions concerning credit-based underwriting decisions;

(2) Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of section 1681m(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., including:

(A) The name, address, and toll-free telephone number of the credit bureau that provided the insurer with the credit-based information;

(B) The fact that the consumer has the right to obtain a free copy of his or her credit report from the appropriate credit bureau; and

(C) The fact that the consumer has the right to challenge information contained in his or her credit report; and

(3)(A) Provide notification to the consumer explaining the reasons for the adverse action.

(B)(i) The reasons shall be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action.

(ii) The notification shall include a description of up to four (4) factors that were the primary influences of the adverse action.

(C) The use of generalized terms such as "poor credit history", "poor credit rating", or "poor credit score" does not meet the explanation requirements of this section.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-409. Filing.**

(a)(1) Insurers that use credit scores to underwrite or rate risks shall file their scoring models or other scoring processes with the State Insurance Department.

(2) A third party may file scoring models on behalf of insurers.

(3) A filing that includes credit scoring shall include loss experience justifying the use of credit information.

(b) Any proprietary consumer report scoring system or model filed with the Insurance Commissioner under this subchapter shall remain confidential unless otherwise directed by a court order.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-410. Indemnification.**

(a) An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of a producer who obtains or uses credit information or credit scores, or both, for an insurer, provided the producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation.

(b) Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-411. Sale of policy term information by consumer reporting organization.**

(a)(1) No consumer reporting agency shall provide or sell data or lists that include any information that, in whole or in part, was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or credit score.

(2) The information includes, but is not limited to:

(A) The expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire; and

(B) The terms and conditions of the consumer's insurance coverage.

(b) The restrictions provided in subsection (a) of this section do not apply to data or lists the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf the producer acted, or the insurer's affiliates or holding companies.

(c) Nothing in this section shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-412. Fair Credit Reporting Act.**

The provisions of this subchapter shall be subject to the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.



**History.** Acts 2003, No. 1452, § 2.

### **23-67-413. Individual underwriting allowed.**

Nothing in this subchapter is intended to prevent an insurer from considering each risk on an individual basis, looking at individual risk characteristics and other factors predictive of future loss.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-414. Regulations.**

The Insurance Commissioner may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of this subchapter.

**History.** Acts 2003, No. 1452, § 2.

### **23-67-415. Annual report regarding personal insurance.**

(a) No later than March 31 of each year, each insurance company writing any personal insurance that uses credit-scoring information shall report to the Insurance Commissioner for each personal insurance type listed in § 23-67-404(9) the number of:

- (1) Policies written during the preceding year;
- (2) Policies that received a premium increase due to credit scoring during the preceding year; and
- (3) Policies that received a premium decrease due to credit scoring during the preceding year.

(b) Information filed with the commissioner under this section by an insurance company shall be treated as proprietary information and is exempt from public disclosure.

**History.** Acts 2003, No. 1452, § 2.

## **SUBCHAPTER 5 — MALPRACTICE INSURANCE RATES**

#### **SECTION.**

- 23-67-501. Applicability.
- 23-67-502. Standards for rates.
- 23-67-503. Rating criteria.
- 23-67-504. Rate administration.
- 23-67-505. Filing of rating information.

#### **SECTION.**

- 23-67-506. Review of filings.
- 23-67-507. Disapproval of rates.
- 23-67-508. Administrative procedures.
- 23-67-509. Provisions cumulative.
- 23-67-510. Effective date.

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**A.C.R.C. Notes.** Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given

period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage

will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by

providing them the information and tools necessary to be an informed and educated consumer of insurance coverage.”

### **23-67-501. Applicability.**

(a) The provisions of this subchapter shall be applicable to malpractice insurance as defined in § 23-62-105(a)(10) except officers and directors liability and fiduciary insurance.

(b) Section 23-67-208 shall not apply to malpractice insurance.

**History.** Acts 2005, No. 1697, § 19.

### **23-67-502. Standards for rates.**

Rates for malpractice insurance shall not be:

(1)(A) Excessive.

(B) A rate is excessive if it is likely to produce a profit from an Arkansas business that is unreasonably high in relation to past and prospective loss experience or if expenses are unreasonably high in relation to the product or services rendered;

(2)(A) Inadequate.

(B) A rate is inadequate if, together with investment income attributable to it, it fails to satisfy projected losses and expenses; or

(3)(A) Unfairly discriminatory.

(B) A rate is unfairly discriminatory in relation to another in the same class of business if it does not reflect equitably the differences in expected losses and expenses.

(C) Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors or with like expense factors but different loss exposures if the rates reflect the differences with reasonable accuracy.

**History.** Acts 2005, No. 1697, § 19.

### **23-67-503. Rating criteria.**

(a) A malpractice insurer shall consider past and prospective loss experience solely within this state.

(b)(1) If insufficient experience exists within this state upon which a rate can be based, the malpractice insurer may consider experience within any other state or states that have similar claim costs and frequency.

(2) If sufficient experience from any other state is not available, the malpractice insurer may use nationwide experience.

(c) In its rate filing and records, the malpractice insurer shall provide detailed information on the data supporting the experience it is using.

(d) When experience outside this state is considered, as much weight as possible shall be given to state experience.

**History.** Acts 2005, No. 1697, § 19.

### **23-67-504. Rate administration.**

(a)(1) The Insurance Commissioner shall promulgate rules requiring each malpractice insurer to record and report its loss and expense experience and any other data, including reserves, the commissioner considers necessary to determine whether rates comply with the standards set forth in § 23-67-502.

(2) The information shall be provided in the form prescribed by the commissioner.

(b) The commissioner may require that the malpractice insurer's annual report and any supplemental report that contains information about a malpractice insurer's loss and loss adjustment reserves be accompanied by an opinion signed and sworn to by a qualified and independent actuary verifying that within the nine (9) months prior to the submission of the report:

(1) The actuary has conducted a review and analysis of the malpractice insurer's loss and loss adjustment reserves; and

(2) The reserves are:

(A) Computed in accordance with accepted loss-reserving standards; and

(B) Fairly stated in accordance with sound loss-reserving principles.

(c) The commissioner shall:

(1) Maintain by malpractice insurer all reports submitted under this section for at least six (6) years; and

(2) Consider the reports in determining the appropriateness of rates for malpractice insurance.

(d) The commissioner may:

(1) Examine and review the assessment of risk for different specialties or practices;

(2) Hold a public hearing on any filing containing a risk assignment for malpractice insurance to determine whether the risk assignment is reasonable; and

(3) Issue orders concerning the risk assignment.

**History.** Acts 2005, No. 1697, § 19.

### **23-67-505. Filing of rating information.**

(a) Every malpractice insurer shall file with the Insurance Commissioner every manual of classifications, rules, and rates, every rating plan, and every modification of any manual classification, rule, or rate that it proposes to use in this state.

(b) The expense provisions included in the rates to be used by a malpractice insurer shall reflect its:



- (1) Operating methods; and
- (2) Actual and anticipated expense experience.

(c)(1) The rates to be used by a malpractice insurer shall contain provisions for contingencies and an allowance permitting a reasonable rate of return.

(2) In determining a reasonable rate of return, consideration shall be given to all investment income reasonably attributable to the insurer's malpractice insurance line of business.

(d) Every filing shall:

- (1) State its proposed effective date;
- (2) Indicate the character and extent of the coverage contemplated; and
- (3) Contain supporting information which may include:
  - (A) The experience or judgment of the malpractice insurer making the filing;
  - (B) Its interpretation of any statistical data relied upon;
  - (C) The experience of other malpractice insurers; and
  - (D) Any other factors that the malpractice insurer deems relevant.

**History.** Acts 2005, No. 1697, § 19.

### **23-67-506. Review of filings.**

(a) All malpractice rate filings shall remain on file for public inspection.

(b) Whenever a malpractice insurer files a proposed overall rate increase of twenty percent (20%) or greater, it shall:

- (1) Publish notice of the filing for three (3) consecutive business days in a newspaper of general circulation in this state; and
- (2) Furnish proof of notice to the Insurance Commissioner.

(c) The commissioner may hold a hearing on any malpractice rate increase filing.

(d) The commissioner shall approve or disapprove all malpractice rate filings subject to the standards for rates under § 23-67-502 within sixty (60) days after the date of the filing.

(e) Notwithstanding subsection (d) of this section, the commissioner may approve an excessive rate if he or she finds that the failure to approve the rate may tend to substantially lessen competition in the Arkansas malpractice insurance market.

**History.** Acts 2005, No. 1697, § 19.

### **23-67-507. Disapproval of rates.**

The Insurance Commissioner shall follow the procedures set forth in § 23-67-213 when any malpractice rate filing under this subchapter is disapproved.

**History.** Acts 2005, No. 1697, § 19.

**23-67-508. Administrative procedures.**

(a) Administrative procedures exercised by the Insurance Commissioner under this subchapter shall be in accordance with §§ 23-61-303 — 23-61-306.

(b)(1) Appeals from orders of the commissioner under this subchapter shall be made in accordance with § 23-61-307.

(2) Any appeal under this subchapter shall be given precedence over other pending matters so that the court may hold a hearing and reach a decision within thirty (30) days of the filing of the transcript, evidence, and files.

**History.** Acts 2005, No. 1697, § 19.

**23-67-509. Provisions cumulative.**

This subchapter supplements existing law. Only those laws and parts of laws in direct conflict with this subchapter are repealed.

**History.** Acts 2005, No. 1697, § 19.

**23-67-510. Effective date.**

This subchapter applies to all malpractice policies issued or renewed on or after January 1, 2006.

**History.** Acts 2005, No. 1697, § 19.

**CHAPTER 68**

**REHABILITATION AND LIQUIDATION OF INSURANCE COMPANIES**

**SECTION.**

- 23-68-101. Uniform Insurers Liquidation Act.
- 23-68-102. Definitions.
- 23-68-103. Delinquency proceedings generally.
- 23-68-104. Commencement of delinquency proceedings.
- 23-68-105. Injunctions — Commissioner as party to suits.
- 23-68-106. Grounds for rehabilitation — Domestic insurers.
- 23-68-107. Grounds for liquidation.
- 23-68-108. Grounds for conservation — Domestic, foreign, and alien insurers.
- 23-68-109. Grounds for ancillary liquidation — Foreign insurers.
- 23-68-110. Order of rehabilitation.
- 23-68-111. Order of liquidation — Domestic and alien insurers.
- 23-68-112. Order of conservation or liqui-

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- dation — Foreign and alien insurers.
- 23-68-113. Conduct of delinquency proceedings against domestic and alien insurers.
- 23-68-114. Disposition of funds held pursuant to § 23-68-113.
- 23-68-115. Conduct of delinquency proceedings against foreign insurers.
- 23-68-116. Claims of nonresidents against domestic insurers.
- 23-68-117. Claims against foreign insurers.
- 23-68-118. Form of claim — Notice — Hearing.
- 23-68-119. Priority of certain claims.
- 23-68-120. Attachment and garnishment of assets.
- 23-68-121. Disposition of moneys collected.

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- 23-68-122. Exemption from fees.
- 23-68-123. Borrowing on pledge of assets.
- 23-68-124. Date of rights and liabilities upon liquidation.
- 23-68-125. Voidable transfers and liens.
- 23-68-126. Priority of distribution of general assets.
- 23-68-127. Offsets.
- 23-68-128. Allowance of certain claims.
- 23-68-129. Time for filing claims.

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- 23-68-130. Report and petition for assessment.
- 23-68-131. Order and levy of assessment.
- 23-68-132. Assessment prima facie correct — Procedures to collect assessment.
- 23-68-133. Reinsurer's liability.
- 23-68-134. Priority of distribution of claims — Legislative intent.

**Publisher's Notes.** For Comments regarding the Uniform Insurers Liquidation Act, see Commentaries Volume B.

**Effective Dates.** Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 750, § 3: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the continued operation of the Liquidation Division of the Department of Commerce—Insurance Department, is in the best interest of the economic welfare of the citizens of this State; and that delay in the effective date of this Act would severely hamper the operations of the Liquidation Division of the Department of Commerce—Insurance Department thereby causing irreparable harm to the proper administration and provision of essential government services. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concern-

ing the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in



effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection

of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

**ALR.** Insolvency of insurance company justifying state dissolution proceedings and the like. 17 A.L.R.4th 16.

**Am. Jur.** 43 Am. Jur. 2d, Ins., § 88 et seq.  
**C.J.S.** 44 C.J.S., Ins., § 127 et seq.

23-68-101. Uniform Insurers Liquidation Act.

(1) Section 23-68-102(2)-(13), together with §§ 23-68-101, 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120, constitute and may be referred to as the “Uniform Insurers Liquidation Act”.

(2) The Uniform Insurers Liquidation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions when applicable conflict with other provisions of this chapter, the provisions of such act shall control.

**History.** Acts 1959, No. 148, § 658; A.S.A. 1947, § 66-4821.

**Publisher’s Notes.** For Comments re-

garding the Uniform Insurers Liquidation Act, see Commentaries Volume B.

CASE NOTES

In General.

Proceedings under the Uniform Insurer’s Liquidation Act, Ark. Code Ann. § 23-68-101 et seq. are similar and analogous to bankruptcy proceedings; in bankruptcy proceedings, for example, the federal

bankruptcy court retains jurisdiction over collateral matters of the bankruptcy pending appeals on piecemeal issues and orders dealing with the details of the bankruptcy. *Fewell v. Pickens*, 346 Ark. 246, 57 S.W.3d 144 (2001).

23-68-102. Definitions.

For the purpose of this chapter:

(1) “Impairment” or “insolvency”. The capital of a stock insurer or the surplus of a mutual or reciprocal insurer shall be deemed to be impaired and the insurer shall be deemed to be insolvent when such insurer is

not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock if a stock insurer, or the minimum surplus if a mutual or reciprocal insurer, required by the Arkansas Insurance Code to be maintained for the kind or kinds of insurance it is then authorized to transact.

(2) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by the commissioner or the equivalent insurance supervisory official of another state.

(3) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(4) "State" means any state of the United States and also the District of Columbia and the Commonwealth of Puerto Rico.

(5) "Foreign country" means territory not in any state.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States, and any such insurer is deemed to be domiciled in such state.

(7) "Ancillary state" means any state other than a domiciliary state.

(8) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the Uniform Insurers Liquidation Act, as defined in § 23-68-101, are in force, including the provisions requiring that the commissioner of insurance or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and, as to such specifically encumbered property, the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets.

(10) "Preferred claim" means any claim with respect to which the law of the state or of the United States accords priority of payments from the general assets of the insurer.

(11) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(12) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claim or claims against general assets. The term also



includes claims which more than four (4) months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(13) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require.

(14) "Hazardous financially" means the existence of any condition or the omission or commission of any act which would, in the reasonable discretion of the commissioner, seriously affect the advisability of an insurer's continued operation in this state or, as a result of its financial condition or other matters, would render the insurer's continued operation in this state perilous to the general public or to the policyholders or creditors of the insurer. The commissioner is authorized to promulgate regulations to set forth standards by which he or she might make a determination that the continued operation of an insurer might be hazardous financially.

**History.** Acts 1959, No. 148, § 638; A.S.A. 1947, § 66-4801; Acts 1993, No. 901, § 33.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### CASE NOTES

#### Special Deposit Claim.

The deposit provided in § 23-63-206 is a special deposit as defined in this section

from which Arkansas creditors are entitled to be paid pro rata. *Combs v. Had-dock*, 241 Ark. 596, 408 S.W.2d 861 (1966).

### 23-68-103. Delinquency proceedings generally.

(a) The Pulaski County Circuit Court shall have original jurisdiction of delinquency proceedings under this chapter, and that court is authorized to make all necessary or proper orders to carry out the purposes of this chapter.

(b) The venue of delinquency proceedings against a domestic, foreign, or alien insurer shall be in the Pulaski County Circuit Court.

(c) Delinquency proceedings pursuant to this chapter shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings unless the petition has been filed in the name of the state on the relation of the Insurance Commissioner.

(d) An appeal shall lie to the Supreme Court from an order granting or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

**History.** Acts 1959, No. 148, § 639; 1985, No. 804, § 19; A.S.A. 1947, § 66-4802; Acts 1997, No. 1000, § 7.

**Publisher's Notes.** Acts 1985, No. 804,

§ 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure



to do so would prevent giving effect to an explicit provision of the act.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

## CASE NOTES

### ANALYSIS

In General.  
Final Order.  
Receiver.

#### **In General.**

The Uniform Insurers Liquidation Act establishes a special statutory proceeding for receivership matters and associated injunctions and, as a consequence, proceedings which are fixed by statute are not controlled by the Arkansas Rules of Civil Procedure. *Fewell v. Pickens*, 344 Ark. 368, 39 S.W.3d 447 (2001), cert. denied, 534 U.S. 894, 122 S. Ct. 213, 151 L. Ed. 2d 152 (2001).

#### **Final Order.**

An order establishing a "permanent" injunction and receivership was a final order within the meaning of this section,

notwithstanding that over the course of the delinquency proceedings, other orders might be entered by the circuit court which would touch and concern the order. *Fewell v. Pickens*, 344 Ark. 368, 39 S.W.3d 447 (2001), cert. denied, 534 U.S. 894, 122 S. Ct. 213, 151 L. Ed. 2d 152 (2001).

#### **Receiver.**

Appointment of receiver for insolvent insurance company by circuit court upon petition by the Attorney General to whom Insurance Commissioner had certified company's insolvency was proper and vacation by chancery court of prior order appointing another receiver upon petition of company's stockholders was justified. *Bullion v. Pope*, 192 Ark. 959, 96 S.W.2d 465 (1936) (decision under prior law).

**Cited:** *Big Rock, Inc. v. Missouri Pac. R.R.*, 295 Ark. 495, 749 S.W.2d 675 (1988).

## **23-68-104. Commencement of delinquency proceedings.**

The Insurance Commissioner shall commence any such proceedings by application to the court for an order directing the insurer to show cause why the commissioner should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers, or the public may require.

**History.** Acts 1959, No. 148, § 640; A.S.A. 1947, § 66-4803.

## CASE NOTES

## ANALYSIS

hearing. *Singer Co. v. Johnston*, 243 Ark. 679, 421 S.W.2d 341 (1967).

**Mandamus.**  
**Waiver.**

**Waiver.**

The statutory requirements of a show cause order and a full hearing did not apply where the insurer waived those statutory requirements by consenting to an immediate receivership in the event of breach without prior notice. *Fewell v. Pickens*, 344 Ark. 368, 39 S.W.3d 447 (2001), cert. denied, 534 U.S. 894, 122 S. Ct. 213, 151 L. Ed. 2d 152 (2001).

**Mandamus.**

Mandamus did not lie to require the circuit court to either grant or deny an application for appointment of a receiver for an insurance company filed by the Insurance Commissioner where, upon a hearing, the court declined to grant the application and set the matter for further

**23-68-105. Injunctions — Commissioner as party to suits.**

(1) Upon application by the Insurance Commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

(4) No judgment or order rendered by any court of this state in any action pending by or against the delinquent insurer after the commencement of delinquency proceedings shall be binding upon the commissioner unless the commissioner shall have been made a party to such suit.

(5) The commissioner shall not be required to plead any suit in which he or she may be a proper party plaintiff or defendant in any of the courts of this state until ninety (90) days after the date of his or her appointment as receiver.

**History.** Acts 1959, No. 148, § 641; 1985, No. 804, § 27; A.S.A. 1947, § 66-4804.

**Publisher's Notes.** For cumulative effect of 1985 amendment to this section, see Publisher's Notes to § 23-68-103.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Insurance, 8 U. Ark. Little Rock L.J. 587.

## CASE NOTES

## ANALYSIS

Applicability.

Waiver.

**Applicability.**

This section is a law enacted for "the business of insurance" within the meaning of the federal McCarran-Ferguson Act (15 U.S.C. § 1011 et seq.). *Baldwin-United Corp. v. Garner*, 283 Ark. 385, 678 S.W.2d 754 (1984), cert. denied, *Baldwin-United Corp. v. Eubanks*, 471 U.S. 1111, 105 S. Ct. 2345 (1985).

**Waiver.**

The statutory requirement of a show cause order did not apply where the insurer waived those statutory requirements by consenting to an immediate receivership in the event of breach without prior notice. *Fewell v. Pickens*, 344 Ark. 368, 39 S.W.3d 447 (2001), cert. denied, 534 U.S. 894, 122 S. Ct. 213, 151 L. Ed. 2d 152 (2001).

**23-68-106. Grounds for rehabilitation — Domestic insurers.**

The Insurance Commissioner may apply to the court for an order appointing him or her in his or her official capacity and his or her successors in office as receiver of and directing him or her to rehabilitate a domestic insurer upon one (1) or more of the following grounds:

- (1) The insurer is impaired or insolvent;
- (2) The insurer has refused to submit any of its books, records, accounts, or affairs to reasonable examination by the commissioner;
- (3) The insurer has concealed or removed records or assets or otherwise violated § 23-69-134;
- (4) The insurer has failed to comply with an order of the commissioner to make good an impairment of capital or surplus or both;
- (5) The insurer has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business into that of any other insurer without having first obtained the written approval of the commissioner;
- (6) The insurer has willfully violated its charter or articles of incorporation or any law of this state;
- (7) The insurer has an officer, director, or manager who has refused to be examined under oath concerning its affairs;
- (8) The insurer has been or is the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or its property otherwise than pursuant to the provisions of the Arkansas Insurance Code, but only if the appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder;



(9) The insurer has consented to an order through a majority of its directors, stockholders, members, or subscribers;

(10) The insurer has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within thirty (30) days after the judgment became final, or within thirty (30) days after the time for taking an appeal has expired, or within thirty (30) days after dismissal of an appeal before final termination, whichever date is the later;

(11) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public;

(12) There is a reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to, the insurer that if established would endanger assets in an amount threatening the solvency of the insurer;

(13) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business;

(14) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy; or

(15) The insurer has failed to file its annual statement or other financial report required by law within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

**History.** Acts 1959, No. 148, § 642; A.S.A. 1947, § 66-4805; Acts 1993, No. 901, § 34.

**Publisher's Notes.** The Arkansas In-

urance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## 23-68-107. Grounds for liquidation.

The Insurance Commissioner may apply to the court for an order appointing him or her as receiver, if his or her appointment as receiver shall not be then in effect, and directing him or her to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regardless of whether or not there has been a prior order directing him or her to rehabilitate such insurer, upon any of the grounds specified in § 23-68-106, or if the insurer:

(1) Has ceased transacting business for a period of one (1) year; or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs or to dissolve its corporate

charter or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 643; A.S.A. 1947, § 66-4806.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## CASE NOTES

### ANALYSIS

Hearing Not Required.  
Mandamus.

#### Hearing Not Required.

The Uniform Insurer's Liquidation Act as a whole, and specifically this section, does not require the trial court to hold a hearing in liquidation proceedings, much less require any form of discovery prior to the court's decision. *Fewell v. Pickens*, 346 Ark. 246, 57 S.W.3d 144 (2001).

This section obviously does not provide for a hearing upon the application by the Commissioner for an order to liquidate; it merely requires, at the least, an applica-

tion by the Commissioner indicating that one of the two provisions of this section, or any of the grounds in Ark. Code Ann. § 23-68-106, have been met. *Fewell v. Pickens*, 346 Ark. 246, 57 S.W.3d 144 (2001).

#### Mandamus.

Mandamus did not lie to require the circuit court to either grant or deny a petition for appointment of a receiver for an insurance company filed by the Insurance Commissioner where, upon a hearing, the court declined to grant the petition and set the matter for further hearing. *Singer Co. v. Johnston*, 243 Ark. 679, 421 S.W.2d 341 (1967).

## 23-68-108. Grounds for conservation — Domestic, foreign, and alien insurers.

(a) The Insurance Commissioner may apply to the court for an order appointing him or her as receiver and directing him or her to conserve the assets of a domestic insurer upon any of the grounds specified in § 23-68-106 or § 23-68-107.

(b) The commissioner may apply to the court for an order appointing him or her as receiver or ancillary receiver and directing him or her to conserve the assets within this state of a foreign insurer upon any of the following grounds:

(1) Upon any of the grounds specified in § 23-68-106 or § 23-68-107;  
or

(2) Upon the ground that its property has been sequestered in its domiciliary sovereignty or in any other sovereignty.

(c) The commissioner may apply to the court for an order appointing him or her as receiver or ancillary receiver and directing him or her to conserve the assets within this state of any alien insurer upon any of the following grounds:

(1) Upon any of the grounds specified in § 23-68-106 or § 23-68-107;

(2) Upon the ground that the insurer has failed to comply within the time designated by the commissioner with an order made by him or her to make good an impairment of its trusteed funds; or

(3) Upon the ground that the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere.

**History.** Acts 1959, No. 148, §§ 644, 645; A.S.A. 1947, §§ 66-4807, 66-4808; Acts 1997, No. 1000, § 8.

### **23-68-109. Grounds for ancillary liquidation — Foreign insurers.**

The Insurance Commissioner may apply to the court for an order appointing him or her as ancillary receiver of and directing him or her to liquidate the business of a foreign insurer having assets, business, or claims in this state upon the appointment in the domiciliary state of the insurer of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever name called for the purpose of liquidating the business of the insurer.

**History.** Acts 1959, No. 148, § 646; A.S.A. 1947, § 66-4809.

### **23-68-110. Order of rehabilitation.**

(a) An order to rehabilitate a domestic insurer shall direct the Insurance Commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(b) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he or she may apply to the court for an order of liquidation.

(c) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply to the court for an order terminating the rehabilitation proceedings and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be made or entered except when, after a hearing, the court has determined that the purposes of the proceeding have been fully accomplished.

**History.** Acts 1959, No. 148, § 647; A.S.A. 1947, § 66-4810.

### **23-68-111. Order of liquidation — Domestic and alien insurers.**

(a)(1) An order to liquidate the business of a domestic insurer shall direct the Insurance Commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his or her own name as commissioner or in the name of the insurer, as the court may direct, and to give notice to all creditors who may have claims against the insurer to present the claims.

(2) The commissioner may apply for and secure an order dissolving the corporate existence of a domestic insurer upon his or her application



for an order of liquidation of the insurer or at any time after the order of liquidation has been granted.

(b) An order to liquidate the business of a United States branch of an alien insurer having trustee assets in this state shall be in the same terms as those prescribed for domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.

**History.** Acts 1959, No. 148, §§ 648, 649; A.S.A. 1947, §§ 66-4811, 66-4812.

### **23-68-112. Order of conservation or liquidation — Foreign and alien insurers.**

(a) An order to conserve the assets of a foreign or alien insurer shall require the Insurance Commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(b) An order to liquidate the assets in this state of a foreign insurer shall require the commissioner forthwith to take possession of the property of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this chapter.

**History.** Acts 1959, No. 148, § 650; A.S.A. 1947, § 66-4813.

### **23-68-113. Conduct of delinquency proceedings against domestic and alien insurers.**

(1) Whenever under this chapter a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the Insurance Commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As a domiciliary receiver, the commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him or her to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this state; and he or she shall have the right to recover the same and reduce the same to possession, except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall

impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his or her possession or control. The court may at any time require a bond from him or her or his or her deputies if deemed desirable for the protection of such assets.

(5) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this chapter for the purpose of rehabilitating, liquidating, or conserving the affairs or assets of the insurer.

(6) In connection with delinquency proceedings, the commissioner may appoint one (1) or more special deputy commissioners to act for him or her, and he or she may employ such counsel, clerks, and assistants as he or she deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

**History.** Acts 1959, No. 148, § 651;  
A.S.A. 1947, § 66-4814.

#### CASE NOTES

**Cited:** Mendel v. Garner, 283 Ark. 473,  
678 S.W.2d 759 (1984).

### **23-68-114. Disposition of funds held pursuant to § 23-68-113.**

(a)(1) The Liquidation Division of the State Insurance Department is authorized to deposit funds now held pursuant to the provisions of § 23-68-113, and the Pulaski County Circuit Court, in one (1) or more accounts, in one (1) or more state or national banks, savings banks, savings and loan associations, or trust companies.

(2) These funds may be combined to yield the highest rate of return on the deposits, or in any other way to facilitate the efficient operation of the division and the respective receiverships under the jurisdiction of the division.

(3) These funds may be used for the purpose of operating the division and the respective receiverships that may, from time to time, fall under its jurisdiction, and for no other purpose.

(b) The funds referred to in subsection (a) of this section shall come from the accounts now held by the division, composed of assets sequestered from domestic insurers, and shall in no way be commingled or combined with funds of the State of Arkansas.

**History.** Acts 1983, No. 750, §§ 1, 2;  
A.S.A. 1947, §§ 66-4814.1, 66-4814.2.

### **23-68-115. Conduct of delinquency proceedings against foreign insurers.**

(1) Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the Insurance Commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment on the grounds set forth in § 23-68-109:

(a) If he or she finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver; or

(b) If ten (10) or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidation of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state; and he or she shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He or she shall also be entitled to recover the other assets of the insurer located in this state, except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from his or her respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. He or she shall promptly transfer all remaining assets to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he or she may be entitled under the laws of this state.

**History.** Acts 1959, No. 148, § 652;  
A.S.A. 1947, § 66-4815.

### **23-68-116. Claims of nonresidents against domestic insurers.**

(1) In a delinquency proceeding begun in this state against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last



date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either:

(a) Be proved in this state; or

(b) If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his or her claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state, as provided in § 23-68-117 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

**History.** Acts 1959, No. 148, § 653;  
A.S.A. 1947, § 66-4816.

### **23-68-117. Claims against foreign insurers.**

(1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in this state may either:

(a) Be proved in the domiciliary state as provided by the law of that state; or

(b) If ancillary proceedings have been commenced in this state, be proved in those proceedings.

In the event that any such claimant elects to prove his or her claim in this state, he or she shall file his or her claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty (40) days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver within thirty (30) days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his or her intention to contest such claim, he or she shall be entitled to appear or to be represented in any proceeding in this state involving adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

**History.** Acts 1959, No. 148, § 654;  
A.S.A. 1947, § 66-4817.

### **23-68-118. Form of claim — Notice — Hearing.**

(1) All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his or her behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

(2) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date for filing as specified in this chapter.

(3) Within ten (10) days of the receipt of any claim, or within such further period as the court may, for good cause shown, fix, the receiver shall report the claim to the court, specifying in such report his or her recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

(4) At the hearing, all persons interested shall be entitled to appear, and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

**History.** Acts 1959, No. 148, § 655;  
A.S.A. 1947, § 66-4818.

### **23-68-119. Priority of certain claims.**

(1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions

of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise, the amount shall be determined in the delinquency proceeding in the domiciliary state.

**History.** Acts 1959, No. 148, § 656;  
A.S.A. 1947, § 66-4819.

### CASE NOTES

#### **Special Deposit Claims.**

If a creditor is not paid in full from the statutorily required special deposit, then for the unpaid balance, the creditor will

participate in the other assets of the corporation in the general liquidation, as provided by this section. *Combs v. Had-dock*, 241 Ark. 596, 408 S.W.2d 861 (1966).

### **23-68-120. Attachment and garnishment of assets.**

During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four (4) months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

**History.** Acts 1959, No. 148, § 657;  
A.S.A. 1947, § 66-4820.

### RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Business Law, 4 U. Ark. Little Rock L.J. 579.



**23-68-121. Disposition of moneys collected.**

(a) The moneys collected by the Insurance Commissioner in a proceeding under this chapter shall be from time to time deposited in one (1) or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state.

(b) The commissioner may in his or her discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund.

**History.** Acts 1959, No. 148, § 659;  
A.S.A. 1947, § 66-4822.

**23-68-122. Exemption from fees.**

The Insurance Commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him or her under this chapter, whether or not the paper or instrument is executed by the commissioner or his or her deputies, employees, or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the commissioner, or with the subsequent conduct of the action or proceeding.

**History.** Acts 1959, No. 148, § 660;  
A.S.A. 1947, § 66-4823.

**23-68-123. Borrowing on pledge of assets.**

(a) For the purpose of facilitating the rehabilitation, liquidation, conservation, or dissolution of an insurer pursuant to this chapter, the Insurance Commissioner may, subject to the approval of the court, borrow money and execute, acknowledge, and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal, or mixed, of the insurer, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any loan and to provide for the repayment thereof.

(b) The commissioner shall be under no obligation personally or in his or her official capacity to repay any loan made pursuant to this section.

**History.** Acts 1959, No. 148, § 661;  
A.S.A. 1947, § 66-4824.

**23-68-124. Date of rights and liabilities upon liquidation.**

The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of this chapter with respect to the rights of claimants holding contingent claims.

**History.** Acts 1959, No. 148, § 662;  
A.S.A. 1947, § 66-4825.

**23-68-125. Voidable transfers and liens.**

(a) Any transfer of, or lien upon, the property of an insurer which is made or created within four (4) months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor a preference or of enabling him or her to obtain a greater percentage of his or her debt than any other creditor of the same class and which is accepted by the creditor having reasonable cause to believe that the preference will occur, shall be voidable.

(b) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of the insurer who shall be concerned in any act or deed and every person receiving thereby any property of the insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the Insurance Commissioner.

(c) The commissioner as receiver in any proceeding under this chapter may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder, subscriber, or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the entering of an order to show cause under this chapter. The property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.

**History.** Acts 1959, No. 148, § 663;  
A.S.A. 1947, § 66-4826.

**23-68-126. Priority of distribution of general assets.**

(a)(1) The priority of distribution of claims from the general assets of the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section.

(2) Every claim in each class shall be paid in full, or adequate funds retained for the payment, before the members of the next class receive any payment.

(3) No subclasses shall be established within any class.

(b) The order of distribution of claims shall be:

(1) CLASS 1. The costs and expenses of administration, including, but not limited to, the following:

(A) The actual and necessary costs of preserving or recovering the assets of the insurer;

(B) Compensation for all services rendered in the liquidation;

(C) Any necessary filing fees from which the receiver is not exempt under § 23-68-122;

(D) The fees and mileage payable to witnesses;

(E) Reasonable attorney's fees; and

(F) The reasonable expenses of the Arkansas Property and Casualty Insurance Guaranty Fund, or any other domestic or foreign guaranty fund or guaranty association, for the handling of claims;

(2) CLASS 2.

(A) All claims under policies for losses incurred, including third-party claims, and all claims of a domestic or foreign guaranty fund or guaranty association.

(B) All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims.

(C) That portion of any loss, for which indemnification is provided by other benefits or advantages recovered by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support, or by way of succession at death, or as proceeds of life insurance, or as gratuities.

(D) No payment by an employer to his or her employee shall be treated as a gratuity;

(3) CLASS 3. Claims under nonassessable policies for unearned premium or other premium refunds;

(4) CLASS 4. Claims of the federal government not included in Class 2 or 3 above;

(5) CLASS 5. Debts due to employees for services performed to the extent that they do not exceed one thousand dollars (\$1,000) and represent payment for services performed within one (1) year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. The priority shall be in lieu of any similar priority which may be authorized by law as to wages or compensation of employees;

(6) CLASS 6. All claims against the insurer for liability for bodily injury to or destruction of tangible property which are not under policies, and claims of general creditors;

(7) CLASS 7. Claims of any state or local government. Claims, including those of any state or local governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of the claim shall be postponed to the class of claims under subdivision (b)(10) of this section;

(8) CLASS 8. Claims filed late or any other claims other than claims under subdivisions (b)(9) and (10) of this section;



(9) CLASS 9. Surplus notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law;

(10) CLASS 10. The claims of shareholders or other owners.

(c)(1) Every claim under a separate account established under the provisions of § 23-81-402 providing that the income, gains, and losses, realized and unrealized, from assets allocated to the separate account shall be credited to or charged against the account without regard to other income, gains, or losses of the life insurance company and, to the extent provided under the applicable contracts, that that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to the separate account shall not be chargeable with liabilities arising out of any other business the company may conduct, shall be satisfied out of the assets in the separate account equal to the reserves maintained in the account for the contracts.

(2) To the extent, if any, reserves maintained in the separate account are in excess of the amounts needed to satisfy claims under the separate account contracts, the excess shall be treated as general assets of the life insurance company.

**History.** Acts 1959, No. 148, § 664; 1983, No. 522, § 36; A.S.A. 1947, § 66-4827; Acts 1993, No. 901, § 37; 1997, No. 1000, § 9.

**Publisher's Notes.** Acts 1983, No. 522, § 51, provided, in part, that the act would

be cumulative of prior laws, and that no prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

### 23-68-127. Offsets.

(a) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, the credits and debts shall be set off, and the balance only shall be allowed or paid, except as provided in subsection (b) of this section.

(b) No offset shall be allowed in favor of any such person where:

(1) The obligation of the insurer to the person would not at the date of the entry of any liquidation order or otherwise, as provided in § 23-68-124, entitle him or her to share as a claimant in the assets of the insurer;

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view of its being used as an offset; or

(3) The obligation of the person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer.

**History.** Acts 1959, No. 148, § 665; A.S.A. 1947, § 66-4828.

**23-68-128. Allowance of certain claims.**

(a) No contingent and unliquidated claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to this chapter, except that the claim shall be considered, if properly presented, and may be allowed to share when:

(1) The claim becomes absolute against the insurer on or before the last day for filing claims against the assets of the insurer; or

(2) There is a surplus and the liquidation is thereafter conducted upon the basis that the insurer is solvent.

(b) When an insurer has been so adjudicated to be insolvent, any person who has a cause of action against an insured of the insurer under a liability insurance policy issued by the insurer shall have the right to file a claim in the liquidation proceeding, regardless of the fact that the claim may be contingent, and the claim may be allowed if:

(1) It may be reasonably inferred from the proof presented upon the claim that the person would be able to obtain a judgment upon the cause of action against the insured;

(2) The person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claim against the insurer arising out of his or her cause of action other than those already presented can be made; and

(3) If the total liability of the insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

(c) No judgment against an insured taken after the date of entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceedings, either of the liability of the insured to the person upon the cause of action or of the amount of damages to which the person is therein entitled.

(d) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for determining rights and liabilities as provided in § 23-68-124 unless the claimant shall surrender his or her security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

(e)(1) Nothing in this chapter shall be construed to authorize the receiver, liquidator, or any other entity to compel payment from a reinsurer on the basis of estimated incurred but not reported losses or outstanding reserves.

(2) Notwithstanding any provision of this chapter to the contrary, the receiver or liquidator may negotiate a voluntary commutation and

release of all obligations arising from reinsurance contracts or other agreements.

**History.** Acts 1959, No. 148, § 666; A.S.A. 1947, § 66-4829; Acts 2005, No. 506, § 33.

## CASE NOTES

### ANALYSIS

Claims Under Policies.  
Judgments.  
No Claim.

#### Claims Under Policies.

Where the circuit court adjudged a fire insurance company to be insolvent and appointed a receiver, outstanding policies of the company were thereby cancelled and a claim for a subsequent loss is not provable against such insurance company. *National Union Fire Ins. Co. v. Bynum*, 183 Ark. 1100, 40 S.W.2d 446 (1931) (decision under prior law).

#### Judgments.

Where judgment was obtained against insurer in motor vehicle accident case and

thereafter insurer became insolvent, the judgment still stands as a valid judgment until the receiver holds that the party was not entitled to damages in the amount of the judgment. *Larey v. Morris*, 245 Ark. 453, 432 S.W.2d 861 (1968).

#### No Claim.

Where contractor was not in default on the contract within the critical time period, the highway department did not have a claim. *Arkansas State Hwy. Comm'n v. Union Indem. Ins. Co.*, 295 Ark. 273, 748 S.W.2d 338 (1988).

## 23-68-129. Time for filing claims.

(a) If, upon the entry of an order of liquidation under this chapter or at any time thereafter during liquidation proceedings, the insurer shall not be clearly solvent, the court shall, upon hearing after such notice as it deems proper, make and enter an order adjudging the insurer to be insolvent.

(b)(1) After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the Insurance Commissioner shall notify all persons who may have claims against the insurer to file the claims with him or her, at a place and within the time specified in the notice, or that the claims shall be forever barred.

(2) The time specified in the notice shall be as fixed by the court for filing of claims and which shall be not less than six (6) months after the entry of the order of insolvency.

(3) The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

**History.** Acts 1959, No. 148, § 667; A.S.A. 1947, § 66-4830.



**23-68-130. Report and petition for assessment.**

Within three (3) years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the Insurance Commissioner may make and file his or her report and petition to the court setting forth:

- (1) The reasonable value of the assets of the insurer;
- (2) The liabilities of the insurer to the extent thus far ascertained by the commissioner;
- (3) The aggregate amount of the assessment, if any, which the commissioner deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments, and the costs and expenses of the delinquency proceedings in full; and
- (4) Any other information relative to the affairs or property of the insurer that the commissioner deems material.

**History.** Acts 1959, No. 148, § 668;  
A.S.A. 1947, § 66-4831.

**23-68-131. Order and levy of assessment.**

(a)(1) Upon the filing and reading of the report and petition provided for in § 23-68-130, the court, ex parte, may order the Insurance Commissioner to assess all members or subscribers of the insurer who may be subject to the assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full.

(2) Any order shall require the commissioner to assess each member or subscriber for his or her proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the commissioner and approved by the court.

(b) The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection (a) of this section if the amendment or supplement is filed within three (3) years after the date of the entry of the order of rehabilitation or liquidation.

(c) After the entry of the order to levy and assess members or subscribers of an insurer referred to in subsection (a) of this section, the commissioner shall levy and assess members or subscribers in accordance with the order.

(d) The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provision of the Arkansas Insurance Code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under the Arkansas Insurance Code, except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in

which event the assessment against the policyholder shall be upon the basis of the minimum rate for such risk.

(e) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with §§ 23-69-125 and 23-70-120.

**History.** Acts 1959, No. 148, § 669; A.S.A. 1947, § 66-4832.

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

### **23-68-132. Assessment prima facie correct — Procedures to collect assessment.**

(a) Any assessment of a subscriber or member of an insurer made by the Insurance Commissioner pursuant to an order of the court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the commissioner under § 23-68-131(a) shall be prima facie correct.

(b) Each member or subscriber shall be notified of the amount of assessment to be paid by him or her by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

(c) If any member or subscriber fails to pay the assessment within the period specified in the notice, which period shall not be less than twenty (20) days after mailing, the commissioner may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place fixed by the court why judgment should not be entered against the member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

(d) If the subscriber or member after due service of a copy of the order and petition referred to in subsection (c) of this section is made upon him or her:

(1) Fails to appear at the time and place specified in the order, judgment shall be entered against him or her as prayed for in the petition; or

(2) Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

(e) The commissioner may collect the assessment through any other lawful means.

**History.** Acts 1959, No. 148, § 670; A.S.A. 1947, § 66-4833.

**23-68-133. Reinsurer's liability.**

(a) The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement.

(b) All reinsurance contracts to which an insurer domiciled in this state is a party that do not contain the provisions required with respect to the obligation of reinsurers in the event of insolvency of the reinsured in order to obtain credit for reinsurance or other applicable statutes, shall be construed to contain the following provisions:

(1)(A) In the event of insolvency and the appointment of a receiver, the reinsurance obligation shall be payable to the receiver upon demand, with reasonable provision for verification, on the basis of claims allowed pursuant to this subchapter, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of any claims.

(B) Payments by the reinsurer as set forth above shall be made directly to the ceding insurer or to its receiver; and

(2)(A) The receiver of a reinsured company shall give written notice of the pendency of a claim against the reinsured company indicating the policy or bond reinsured within a reasonable time after the claim is filed.

(B) The receiver of a reinsured company may arrange for the giving of notice of the pendency of claims on reinsured policies by guaranty funds or by other persons responsible for the adjustment and settlement of the reinsured company's claims.

(C) Failure to give notice shall not excuse the obligation of the reinsurer unless it is substantially prejudiced thereby.

(D) The reinsurer may interpose, at its own expense, in the proceeding where the claim is to be adjudicated, any defense or defenses which it may deem available to the reinsured company or its receiver.

(c)(1) Payments by the reinsurer as set forth shall be made directly to the ceding insurer or its receiver, except where the contract of insurance or reinsurance specifically provides for another payee in the event of insolvency of the ceding insurer in accordance with any applicable requirements of statutes, rules, or orders of the domiciliary state of the ceding insurer.

(2) The receiver shall be entitled to recover from any person who unsuccessfully makes a claim directly against the reinsurer the receiver's attorneys' fees and expenses incurred in preventing any collection by the person.

(d) This section shall become effective on and after January 1, 1998, and shall apply to all contracts entered into, renewed, extended, or amended on or after that date, and to obligations arising from any business written or transaction occurring covered by reinsurance after January 1, 1998, pursuant to any contract, including those in existence prior to the effective date.



**History.** Acts 1997, No. 1000, § 26.

**23-68-134. Priority of distribution of claims — Legislative intent.**

It is the intent of the General Assembly that § 23-68-126 as amended by this act apply to pending and future claims in existing delinquency proceedings as well as to claims in delinquency proceedings arising after July 2, 1997; that, in light of the ruling of the United States Supreme Court in *United States Department of the Treasury v. Fabe*, 508 U.S. 491 (1993), the General Assembly considers this act to be curative, remedial, and not affecting substantive rights in the distribution of assets in delinquency proceedings; that this act is necessary to cure any potential defect in the present priority of distribution scheme that may result from the Fabe decision and to preserve the original intent of the General Assembly with regard to the priorities of payment in delinquency proceedings.

**History.** Acts 1997, No. 1000, § 10.

**Meaning of “this act”.** Acts 1997, No. 1000, codified as §§ 17-19-301, 19-4-803, 23-60-102, 23-61-201, 23-63-302, 23-63-206, 23-67-212, 23-67-219, 23-68-103, 23-

68-108, 23-68-126, 23-68-133, 23-68-134, 23-79-503, 23-79-513, 23-86-201, 23-86-202, 23-86-208, 23-86-209, 23-92-307 [repealed], 26-51-423, 26-51-436.

CHAPTER 69

DOMESTIC STOCK AND MUTUAL INSURERS

- SUBCHAPTER.
1. GENERAL PROVISIONS.
  2. STOCK INSURERS — INSIDER TRADING.
  3. MUTUAL INSURANCE HOLDING COMPANY ACT.

RESEARCH REFERENCES

**Am. Jur.** 43 Am. Jur. 2d, Ins., §§ 60 et seq., 65 et seq.

**C.J.S.** 44 C.J.S., Ins., §§ 99 et seq., 109 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

- |   |   |
|---|---|
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| 23-69-102. Definitions.                                     | 23-69-107. Articles of incorporation — Amendment.                     |
| 23-69-103. Inapplicability of general corporation statutes. | 23-69-108. Officers.  |
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- 23-69-136. Situs of personal property for taxation.
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- 23-69-139. Assessment of stockholders or members.
- 23-69-140. Mutualization of stock insurers.
- 23-69-141. Converting mutual insurer to stock insurer.
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- 23-69-143. Mergers and consolidations — Mutual insurers.
- 23-69-144. Agreement or adoption of plan for merger, consolidation, or plan of exchange of shares.
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- 23-69-146. Effect of exchange under plan of exchange.
- 23-69-147. Acquiring and acquired corporations under a plan of exchange to be separate.
- 23-69-148. Nonconsenting stockholders.
- 23-69-149. Assumption reinsurance — Stock insurers.
- 23-69-150. Assumption reinsurance — Mutual insurers.
- 23-69-151. Voluntary dissolution — Procedure.
- 23-69-152. Dissolution — Directors to act as trustees.
- 23-69-153. Dissolution — Continuation for suits and settling business.
- 23-69-154. Voluntary dissolution — Distribution of assets to stockholders.
- 23-69-155. Liquidation — Mutual member's share of assets.
- 23-69-156. Nonactive corporate charter — Nullification.

**Cross References.** Conversion to legal reserve mutual life insurer, § 23-75-122.

Conversion to mutual insurer, § 23-73-117.

Manner of payment of claims, §§ 23-63-107, 23-66-321.

**Preambles.** Acts 1971, No. 301 contained a preamble which read: "Whereas, it has been determined that it would pro-

mote local industry through retention of existing stock insurance corporations and otherwise assist in the orderly processes of such companies that desire to enter into plans of reorganization...."

**Effective Dates.** Acts 1965, No. 459, § 2: Mar. 20, 1969. Emergency clause provided: "It has been found and determined by the General Assembly of the State of Arkansas that the present law relating to the usage and regulation of proxies issued by stockholders of domestic stock insurers is inadequate due to the lack of regulatory provisions therein, and that the power to regulate the solicitation of proxies should be immediately given the State Insurance Commissioner in order that any persons asked to grant a proxy in their stock will be assured that the information used by the person or persons seeking such proxies is true and correct, and that this Act is immediately necessary in order to protect stockholders in this State from the possibility of allowing their stock to be voted by another without fully understanding the consequences thereof. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and welfare shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 301, § 9: Mar. 16, 1971. Emergency clause provided: "The General Assembly finds and determines that the present law relating to merger and consolidation of insurance corporations is inadequate; and that this Act and the rules, regulations and orders which may be adopted hereunder are immediately necessary in order to protect the public and stockholders in stock insurance corporations. An emergency is therefore declared to exist and this Act being necessary for the promotion of the public health, welfare and safety shall be effective from and after its passage and approval."

Acts 1977, No. 373, § 4: Mar. 7, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health, and

safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 452, § 5: Mar. 8, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the area of insurance is a rapidly growing and changing industry; that the effectiveness of this act is essential to the operation of the insurance industry; that the availability of qualified custodians for insurance company assets is diminishing; and that a delay in the effective date would cause unnecessary hardship to the insurance industry in placing their assets with qualified custodians. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither



approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 540, § 2: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current law requiring notice to cure the insolvency of domestic stock and mutual insurers conflicts with current risk-based capital laws; that risk-based capital laws contain sufficient methods for providing notice and allow time to resolve impairments of domestic insurers or other domestic entities; that this act resolves the conflict by narrowing the application and scope of the current insolvency notice law; and that this act is necessary to adequately protect consumers purchasing insurance from domestic insurers. Therefore, an emergency is declared to exist, and this act being

necessary for the preservation of the public peace, health, and safety, shall become effective on July 1, 2003."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

### 23-69-101. Scope.

Sections 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156 shall apply only to domestic stock insurers and domestic mutual insurers transacting, or proposing to transact, insurance on the legal reserve plan.

**History.** Acts 1959, No. 148, § 453; A.S.A. 1947, § 66-4201.

### 23-69-102. Definitions.

As used in §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, unless the context otherwise requires:

(1) A "stock" insurer is an incorporated insurer with capital divided into shares and owned by its stockholders;

(2) A "mutual" insurer is an incorporated insurer without permanent capital stock and the governing body of which is elected as provided in §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156.

**History.** Acts 1959, No. 148, §§ 454, 455; A.S.A. 1947, §§ 66-4202, 66-4203.

### **23-69-103. Inapplicability of general corporation statutes.**

The statutes of this state relating to the powers and procedures of corporations other than insurance corporations shall not apply to domestic stock insurers and domestic mutual insurers, except as stated in § 23-69-128.

**History.** Acts 1959, No. 148, § 456; A.S.A. 1947, § 66-4204.

### **RESEARCH REFERENCES**

U. Ark. Little Rock L.J. Mathews,  
Corporate Statutes—Which One Applies?,  
13 U. Ark. Little Rock L.J. 93.

### **23-69-104. Powers of company not enlarged.**

Nothing in §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156 shall be construed to authorize any company to engage in any kind of insurance business not authorized by its articles of incorporation nor to authorize any foreign or alien company to engage in any kind of insurance business in this state not covered by its certificate of authority to do business in this state.

**History.** Acts 1971, No. 301, § 2; A.S.A. 1947, § 66-4245.1.

### **23-69-105. Incorporation.**

(a) This section applies to stock and mutual insurers hereafter incorporated in this state.

(b) One (1) or more persons may act as the incorporator or incorporators of a stock or mutual insurer by delivering articles of incorporation to the Insurance Commissioner for filing.

(c) The incorporator or incorporators shall execute articles of incorporation in duplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state and show:

(1) The name of the corporation. If a mutual, the word “mutual” may be a part of the name. An alternative name may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein;

(2) The duration of its existence, which may be perpetual;

(3) The kinds of insurance, as defined in the Arkansas Insurance Code, which the corporation is formed to transact;

(4) If a stock corporation, its authorized capital stock, the number of shares of stock into which divided, the par value of each share, which

par value shall be at least one dollar (\$1.00). Shares without par value shall not be authorized;

(5) If a stock corporation, the extent, if any, to which shares of its stock shall be subject to assessment;

(6) If a mutual corporation, other than a life insurer, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. The liability shall be as stated in the articles of incorporation but shall not be less than one (1) nor more than six (6) times the premium for the member's policy at the annual premium rate for a term of one (1) year;

(7) The number of directors, not less than three (3), who shall constitute the board of directors and conduct the affairs of the corporation and the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than one (1) year after the date of incorporation;

(8) The name of the city or town and county in this state in which is to be located its home office and principal place of business;

(9) Such other provisions, not inconsistent with law, deemed appropriate by the incorporator or incorporators; and

(10) The name and residence address of each incorporator.

**History.** Acts 1959, No. 148, § 457; A.S.A. 1947, § 66-4205; Acts 2001, No. 1604, §§ 47, 48.

Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

## 23-69-106. Articles of incorporation — Filing and approval.

(a)(1) The incorporator or incorporators of a proposed domestic insurer incorporated under this subchapter, particularly §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, shall deliver the duplicate originals of the articles of incorporation thereof to the Insurance Commissioner together with the filing fees therefor specified in § 23-61-401 or any companion rule and regulation of the commissioner.

(2) If the commissioner finds that the articles comply with law, he or she shall endorse his or her approval upon each set of the articles and issue his or her certificate of incorporation.

(3) He or she shall thereupon place one (1) set of the articles on file in his or her office, and return the other set of the articles, for the records of the corporation, together with his or her certificate of incorporation, to the incorporator or incorporators or to the representative or representatives of the incorporator or incorporators.

(b) If the commissioner finds that the proposed articles of incorporation do not comply with law or that the corporation, if organized, could not meet the requirements for a certificate of authority under § 23-63-202 or other provisions of the Arkansas Insurance Code, the commissioner shall refuse to approve the articles of incorporation and shall return the duplicate sets thereof to the incorporator or incorporators, together with a written statement of his or her reasons for the



nonapproval. The filing fee paid pursuant to subsection (a) of this section shall not be returnable.

(c) The corporation shall have legal existence as such upon the issuance of the certificate of incorporation by the commissioner, but it shall not transact business as an insurer until it has applied for and received from the commissioner a certificate of authority as provided by the Arkansas Insurance Code.

(d) A copy of the certificate of incorporation, certified by the commissioner, shall be admissible in all the courts of this state as prima facie evidence of due incorporation.

**History.** Acts 1959, No. 148, § 458; A.S.A. 1947, § 66-4206; Acts 2001, No. 1604, § 49. Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-69-107. Articles of incorporation — Amendment.**

(a) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included due notice of the proposal to amend.

(b) A domestic mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.

(c)(1) Upon adoption of an amendment, the insurer shall make in duplicate under its corporate seal a certificate, sometimes referred to as "articles of amendment", setting forth the amendment and the date and manner of the adoption thereof. The certificate shall be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds.

(2) The insurer shall deliver to the Insurance Commissioner the duplicate originals of the certificate, together with the filing fee specified therefor in § 23-61-401 or by rule and regulation.

(3) If he or she finds that the certificate and amendments comply with law, the commissioner shall endorse his or her approval upon each of the duplicate originals, place one (1) set on file in his or her office, and return the remaining set to the insurer for its corporate records.

(4) The amendment shall be effective when the commissioner has endorsed his or her approval on the certificate of amendment and placed it on file in his or her office.

(d) If the commissioner finds that the proposed amendment or certificate does not comply with law, the commissioner shall not approve it and shall return the duplicate certificate of amendment to

the insurer together with his or her written statement of reasons for nonapproval. The filing fee shall not be returnable.

(e)(1) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount thereof then outstanding, the commissioner shall not approve the amendment if he or she has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by such a reduction.

(2) If any reduction of capital stock is effectuated, the insurer may require return of the original certificates of stock held by each stockholder for exchange for new certificates for such number of shares as the stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of the reduction.

**History.** Acts 1959, No. 148, § 459; A.S.A. 1947, § 66-4207; Acts 2001, No. 1604, §§ 50, 51.

### **23-69-108. Officers.**

(a)(1)(A) Every domestic stock or mutual insurer shall have:

(i)(a) A chief executive officer or a president, or both.

(b) The chief executive officer or president shall also serve as a member of the board of directors;

(ii) A secretary; and

(iii) A treasurer.

(B) The chief executive officer, president, secretary, and treasurer shall be chosen by the board of directors and shall hold their offices until their respective successors are chosen and qualify.

(2) Every domestic stock insurer or mutual insurer may also have one (1) or more vice presidents, who need not be directors; assistant secretaries and assistant treasurers, who need not be directors; and such other officers, agents, and factors as may be deemed necessary.

(b) All officers, agents, and factors shall be chosen in such manner, hold their offices for such terms, and have powers and duties as may be prescribed by the bylaws or determined by the board of directors.

(c) Any person may hold two (2) or more offices, except that the president shall not be also the secretary or an assistant secretary of the insurer.

**History.** Acts 1959, No. 148, § 486; A.S.A. 1947, § 66-4234; Acts 2005, No. 506, § 34.

**23-69-109. Pecuniary interest of officers, directors, employees, etc.**

(a) Any officer or director, any member of any committee, or any employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds:

(1) Shall not deposit or invest the funds except in the insurer's corporate name;

(2) Shall not borrow the funds of the insurer;

(3) Shall not be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of the insurer except as a stockholder or member;

(4) Shall not take or receive to his or her own use any fee, brokerage commission, gift, or other consideration for or on account of any transaction made by or on behalf of the insurer.

(b) No insurer shall guarantee any financial obligation of any of its officers or directors.

(c) This subsection shall not prohibit a director or officer, member of a committee, or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders.

(d) The Insurance Commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (a) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private, professional, or business capacity of the director or the corporation or firm.

**History.** Acts 1959, No. 148, § 488;  
A.S.A. 1947, § 66-4236.

**23-69-110. Vacancies on the board of directors.**

(a) Vacancies on the board of directors may be filled by the remaining members of the board, and each person so elected shall be a director until his or her successor is elected by the stockholders or members, at the next annual meeting of stockholders or members, or at any special meeting of stockholders or members called for that purpose and held prior thereto.

(b) This section shall not apply to insurers organized and duly licensed to transact business prior to January 1, 1960, if the bylaws or articles of incorporation of the insurers provide for other methods of filling vacancies on the board of directors.

**History.** Acts 1959, No. 148, § 474;  
A.S.A. 1947, § 66-4222.



**23-69-111. Corporate powers and duties.**

(a) An insurance corporation formed under §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, or existing on January 1, 1960, and of a type which might be formed under §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, shall have the same capacity to act possessed by individuals, but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.

(b) Without affecting the authority contained in subsection (a) of this section, every insurance corporation formed under §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156 shall have the following corporate powers:

(1) To have succession by its corporate name for the period stated in its articles;

(2) To sue and be sued in a corporate name;

(3) To adopt, use, and alter a corporate seal, which shall show the year of incorporation;

(4) To acquire, hold, sell, use, dispose of, pledge, or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation;

(5) To transact insurance;

(6) To conduct its affairs through its directors, officers, employees, agents, and representatives thereunto authorized;

(7) To make bylaws not inconsistent with law for the exercise of its corporate powers; for the management, regulation, and government of its affairs and property, including, but not limited to, transfer of its stock and calling and holding of meetings of its directors, stockholders, or members; and to modify or amend the bylaws;

(8) To exercise, subject to law and the express provisions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in the articles; and

(9) To dissolve and wind up, or be dissolved and wound up, in the manner provided by law.

(c) An insurer shall have power to make donations for the public welfare or for charitable, scientific, or educational purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendment thereto.

**History.** Acts 1959, No. 148, §§ 460, 461; A.S.A. 1947, §§ 66-4208, 66-4209.

**23-69-112. Initial qualifications — Domestic mutuals.**

(a) When newly organized, a domestic mutual insurer may be authorized to transact any one (1) of the kinds of insurance listed in §§ 23-62-101 — 23-62-108.

(b) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under the Arkansas Insurance

Code and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at an adequate rate approved by the Insurance Commissioner, and must have surplus funds on hand as of the date the insurance coverages are to become effective in amounts equal to or exceeding those surplus funds required of a foreign mutual insurer in §§ 23-63-205 and 23-63-207.

**History.** Acts 1959, No. 148, § 462; A.S.A. 1947, § 66-4210; Acts 2001, No. 1604, § 52.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Cross References.** Conversion to mutual insurers, § 23-73-117.

### **23-69-113. Formation of nonlife mutual insurer — Deposit required.**

(a) Before soliciting any applications for insurance as required under § 23-69-112 as a qualification for the certificate of authority, the incorporator or incorporators of the proposed insurer shall deposit with the Insurance Commissioner acceptable securities in the penal sum of one hundred thousand dollars (\$100,000) in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The deposit shall be conditioned as follows:

(1) For the prompt return to applicant members of all premiums collected in advance;

(2) For payment of all indebtedness of the corporation; and

(3) For payment of costs incurred by the state in the event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corporation fails to complete its organization and secure a certificate of authority within one (1) year from and after the date of its certificate of incorporation.

(b) The remaining portion of a deposit held under this section shall be released and discharged upon settlement and termination of all liabilities against the deposit.

(c) This section does not apply to mutual insurers licensed on or before August 13, 2001.

**History.** Acts 1959, No. 148, § 463; A.S.A. 1947, § 66-4211; Acts 2001, No. 1604, § 53; 2009, No. 726, § 34.

**Amendments.** The 2009 amendment, in the introductory language of (a), substituted "deposit" for "file" in two places and deleted "a corporate surety bond or other"

following "Insurance Commissioner"; deleted (b) and redesignated the subsequent subsections accordingly; substituted "The remaining portion of a deposit" for "Any bond filed or deposit or remaining portion thereof" in (b); and made minor stylistic changes.

## CASE NOTES

**Bond.**

Bond covered claims accruing to any person during the term of the bond. *American Fire Ins. Co. v. Haynie*, 91 Ark. 43, 120 S.W. 825 (1909) (decision under prior law).

Receiver of insolvent mutual insurance company was not entitled to sue sureties on indemnity bond since such bond is not an asset of the corporation. *Forte v. Chamberlain*, 93 Ark. 112, 124 S.W. 234 (1910); *Johnson v. House*, 131 Ark. 113, 198 S.W.

876 (1917) (preceding decisions under prior law).

Where bond was required by statute to be executed by sureties for an insurance company, unless it would do violence to the bond itself, it will be presumed that the sureties intended to execute the bond in compliance with statutory requirements. *Crawford v. Ozark Ins. Co.*, 97 Ark. 549, 134 S.W. 951 (1911) (decision under prior law).

**23-69-114. Formation of nonlife mutual insurer — Applications for insurance.**

(a) Upon receipt of the Insurance Commissioner's approval of the bond or deposit as provided in § 23-69-113, the directors and officers of the proposed domestic mutual insurer may commence solicitation of the requisite applications for insurance policies as they may accept, and they may receive deposits of premiums thereon.

(b) All applications shall be in writing signed by the applicant, covering subjects of insurance resident, located, or to be performed in this state.

(c) All applications shall provide that:

(1) Insurance of the policy is contingent upon the insurer's qualifying for and receiving a certificate of authority;

(2) No insurance is in effect unless and until the certificate of authority has been issued; and

(3) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date. The date shall be not later than one (1) year after the date of the certificate of incorporation.

(d) All qualifying premiums collected shall be in cash.

(e)(1) Solicitation for qualifying applications for insurance shall be by licensed agents of the corporation, and upon the corporation's application, the commissioner shall issue temporary agent's licenses expiring on the date specified pursuant to subdivision (c)(3) of this section to individuals qualified as for an agent's or producer's license except as to the taking or passing of an examination.

(2) The commissioner may suspend or revoke any license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents and producers in general under § 23-64-101 et seq., § 23-64-201 et seq., and the Producer Licensing Model Act, § 23-64-501 et seq.



**History.** Acts 1959, No. 148, § 464; A.S.A. 1947, § 66-4212; Acts 2003, No. 1203, § 15.

### **23-69-115. Trust deposit of premiums — Issuance of policies — Mutual insurers.**

(a) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with § 23-69-114(c)(3). The corporation shall file an executed copy of the trust agreement with the Insurance Commissioner.

(b) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which the applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by the policies shall be effective as of the date of the certificate of authority, or thereafter as provided by the policies.

**History.** Acts 1959, No. 148, § 465; A.S.A. 1947, § 66-4213.

### **23-69-116. Failure to complete organization — Mutual insurers.**

If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within one (1) year from and after the date of its certificate of incorporation, the corporation shall be dissolved by the Insurance Commissioner. The commissioner shall then return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under § 23-69-115.

**History.** Acts 1959, No. 148, § 466; A.S.A. 1947, § 66-4214.

### **23-69-117. Additional kinds of insurance — Mutual insurers.**

A domestic mutual insurer, after being authorized to transact one (1) kind of insurance, may be authorized by the Insurance Commissioner to transact such additional kinds of insurance as are permitted under § 23-63-204, while otherwise in compliance with the Arkansas Insurance Code and while maintaining unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, subject further to the additional expendable surplus requirements of § 23-63-207 applicable to such a stock insurer.

**History.** Acts 1959, No. 148, § 467; A.S.A. 1947, § 66-4215.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-69-118. Membership — Mutual insurers.**

(a) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of membership, and the policy shall so specify.

(b) Any person, government, or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee, or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee, or legal representative of a corporation, board, association, or estate may be recognized as acting for or on its behalf for the purpose of the membership and shall not be personally liable upon any contract of insurance for acting in a representative capacity.

(c) Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which the corporation is organized and as such granted as the rights and powers expressly conferred by its articles of incorporation.

**History.** Acts 1959, No. 148, § 468;  
A.S.A. 1947, § 66-4216.

### **CASE NOTES**

#### **Political Subdivisions.**

School districts were authorized to buy fire insurance in foreign as well as domestic mutual companies when foreign com-

panies were authorized to do business in the state. *Clifton v. School Dist.*, 192 Ark. 140, 90 S.W.2d 508 (1936) (decision under prior law).

### **23-69-119. Bylaws — Mutual insurers.**

(a)(1) A domestic mutual insurer shall have bylaws consistent with § 23-69-111(b)(7).

(2) The initial board of directors of a domestic mutual insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting.

(3) The members may make, modify, and revoke bylaws.

(b) The bylaws shall provide:

(1)(A) That on each matter coming to a vote at meetings of members, each member is entitled to one (1) vote or to more votes according to a reasonable classification of members stated in the bylaws and based on the amount of the insurance in force, the number of policies held, the amount of the premiums paid by the member, or other reasonable factors.

(B)(i) A member may vote in person or by his or her written proxy.

(ii) A proxy shall not be made irrevocable or for longer than a reasonable period of time;

(2) For election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(3) The time, notice, quorum, and conduct of annual and special meetings of members and voting. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be stated in the policy without giving other notice of the meeting;

(4) The number, designation, election, terms, powers, and duties of the respective corporate officers;

(5) For deposit, custody, disbursement, and accounting for corporate funds; and

(6) For the other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(c) A provision in the bylaws for determining a quorum of members at a meeting that is less than a majority of the insurer's members shall not be effective unless approved by the Insurance Commissioner. This subsection does not affect other law requiring the vote of a larger percentage of members for a specified purpose.

(d)(1) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of each modification or addition.

(2) The commissioner shall disapprove a bylaw provision that the commissioner deems unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any other class.

(3) After receiving written notice of the disapproval of the bylaw provision and during the bylaw provision's existence, the insurer shall not effectuate a bylaw provision so disapproved.

(e) Each domestic stock insurer shall provide written notice to the commissioner within fourteen (14) days after a modification of its bylaws.

**History.** Acts 1959, No. 148, § 469; A.S.A. 1947, § 66-4217; Acts 2011, No. 760, § 11. **Amendments.** The 2011 amendment subdivided (b)(1); and added (e).

### **23-69-120. Meetings of stockholders or members.**

(a) Meetings of stockholders or members of a domestic insurer shall be held in the city or town of its principal office or place of business in this state or in such other place within the State of Arkansas as shall be specified by its articles of incorporation or articles of association.

(b) No meeting of stockholders or members shall amend the insurer's articles of incorporation unless the proposal so to amend was included in the notice of the meeting.

(c) Each insurer shall hold an annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs, and transact such other business as may properly be brought before it. Not less than five (5) days' prior notice shall be given of the meeting in the



manner provided in the bylaws, except where notice of the annual meeting of a mutual insurer is contained in its policies.

(d) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors, upon not less than five (5) days' notice as provided in the bylaws. The notice shall state the purpose of the meeting, and no business of which notice was not so given shall be transacted at the meeting. The bylaws may also provide for the calling of special meetings by a designated committee of the board of directors, by one (1) or more designated officers of the insurer, or by a specified proportion of the stockholders or members.

(e) If more than fifteen (15) months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call a meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-third ( $\frac{1}{3}$ ) of the voting power of all stockholders or members, it shall be the duty of the secretary to call a special meeting of stockholders or members to be held at such time as the secretary may fix in the written notice thereof, not less than five (5) nor more than sixty (60) days after the receipt of the request. If the secretary fails to issue the call, the director, stockholders, or members making the request may do so.

(f) A stockholders' or members' meeting held can be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(1) The presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders, or of all members shall constitute a quorum;

(2) The stockholders or members present at an organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

(3) If any necessary officer fails to attend the meeting, any stockholder or member present may be elected to act temporarily in lieu of the absent officer;

(4) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting to such time as they may determine, but in the case of any meeting called for the election of any director, the adjournment must be to the next day and those who attend the adjourned meeting, although less than a quorum as fixed in this section or in the articles of incorporation, shall nevertheless constitute a quorum for the purpose of electing any director; and

(5) An annual or special meeting of stockholders or members may be adjourned to another date without new notice being given.

**History.** Acts 1959, No. 148, § 470;  
A.S.A. 1947, § 66-4218.

**23-69-121. Stockholders' voting rights.**

(a) Unless otherwise provided in the articles of incorporation or an amendment thereof, every stockholder of record of a domestic stock insurer shall be entitled, at each meeting of stockholders thereof and upon each proposal presented at the meeting, to one (1) vote for each share of stock standing in his or her name on the books of the insurer.

(b)(1) The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding forty (40) days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect.

(2) However, in lieu of closing the stock transfer books as described in this section, the bylaws may fix or authorize the board of directors to fix in advance a date, not exceeding forty (40) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect as a record date for the determination of the stockholders entitled to notice of, and to vote at, the meeting, or entitled to receive payment of any dividend or to any allotment of rights, or to exercise the rights in respect of any change, conversion, or exchange of capital stock. In such cases the stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to the notice of, and to vote at, the meeting or to receive payment of such a dividend, or to receive such an allotment of rights, or to exercise those rights, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any record fixed as described in this section.

**History.** Acts 1959, No. 148, § 471;  
A.S.A. 1947, § 66-4219.

**23-69-122. Proxies — Stock insurers.**

(a) Every proxy of a stockholder of an insurer shall be revocable at will, and this provision cannot be waived.

(b) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.

(c) The Insurance Commissioner shall have the authority to:

(1) Regulate the solicitation of proxies by any person;

(2) Require the disclosure of information deemed relevant to an understanding of issues and matters with respect to which proxies are, or are proposed to be, solicited;

(3) Specify general requirements as to form and contents of proxies;

(4) Determine the length of time for which proxies may be effective unless sooner revoked;

(5) Prohibit solicitations of proxies which do not comply with such rules and regulations as the commissioner may issue hereunder, or as

to which disclosures required by the rules and regulations are not made;

(6) Prohibit the making or use of false or misleading statements or the distribution of any false or misleading material with respect to the solicitation of any proxy or with respect to any election or election contest; and

(7) Issue such other rules and regulations respecting proxies and elections as the commissioner may deem necessary or appropriate in the public interest or for the protection of stockholders of insurers.

(d) Rules and regulations issued by the commissioner under authority of this section shall be made or amended as provided in § 23-61-108.

(e) Insofar as may be practical, rules and regulations with respect to proxies, consents, or authorizations then currently approved or formulated by the National Association of Insurance Commissioners, or its successor organization, shall be followed.

**History.** Acts 1959, No. 148, § 472; 1965, No. 459, § 1; A.S.A. 1947, § 66-4220.

#### RESEARCH REFERENCES

**Ark. L. Rev.** Proxy and Insider-Trading Regulation: Federal-State Cooperation in the Protection of Investors, 19 Ark. L. Rev. 308.

#### CASE NOTES

##### **Voting Trusts.**

The policy so clearly and emphatically expressed of prohibiting irrevocable prox-

ies must, necessarily, preclude the allowance of a voting trust. *Bailey v. Jones*, 242 Ark. 668, 419 S.W.2d 585 (1967).

#### **23-69-123. Buying of vote or proxy — Corrupt and dishonest practices prohibited.**

(a) No person shall buy or sell a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any meeting.

(b) Violation of this section shall be punishable as provided in § 23-60-108.

**History.** Acts 1959, No. 148, § 473; A.S.A. 1947, § 66-4221.

#### **23-69-124. Contingent liability of nonlife mutual members.**

(a)(1) Each member of a domestic mutual insurer other than a life insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's articles of incorporation.



(2) Termination of the policy of any member shall not relieve the member of contingent liability for his or her proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

(b)(1) If at any time the assets of a domestic mutual insurer other than a life insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by the Arkansas Insurance Code for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the twelve (12) months preceding the date notice of the assessment was mailed to them, and the members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure the deficiency and to provide a reasonable amount of working funds above the minimum amount of surplus, but working funds so provided shall not exceed five percent (5%) of the insurer's liabilities as of the date as of which the amount of the deficiency was determined.

(3) In levying an assessment on policies providing for contingent liability, the assessment shall be computed on the basis of premiums earned on the policies.

(4) No member shall have an offset against any assessment for which he or she is liable, on account of any claim for unearned premium or loss payable.

**History.** Acts 1959, No. 148, §§ 475, 476; A.S.A. 1947, §§ 66-4223, 66-4224.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## CASE NOTES

### **Nature of Contract.**

Contract of insurance between school district and foreign mutual insurance company by which a maximum premium was agreed upon as the extent of liability of the district, one-half of which to be paid

in cash and the other half by assessment if necessary, did not make the school district a stockholder in the mutual insurance company. *Clifton v. School Dist.*, 192 Ark. 140, 90 S.W.2d 508 (1936) (decision under prior law).

## **23-69-125. Contingent liability and assessability of policies — Mutual insurers.**

(a)(1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the Insurance Commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued.

(2) No domestic mutual legal reserve life insurer shall at any time issue policies providing for or subject to contingent liability or assessment of members.

(b)(1) The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for the authority, or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked.

(2) This subsection does not apply to domestic mutual legal reserve life insurers.

**History.** Acts 1959, No. 148, §§ 477, 478; A.S.A. 1947, §§ 66-4225, 66-4226.

### **23-69-126. Participating policies.**

(a) A domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any classification or determination shall be reasonable and shall not unfairly discriminate as between policyholders within the same classifications.

(b) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. This subsection shall not apply as to life policy dividends payable for a dividend year in advance, contingent upon payment of the premium for the year.

**History.** Acts 1959, No. 148, § 479; A.S.A. 1947, § 66-4227.

### **23-69-127. Consideration for stock.**

(a) Shares of stock of a domestic stock insurer shall be issued for a consideration having a value in the judgment of the insurer's board of directors of not less than the par value of the stock so issued.

(b) In the absence of fraud, or willful over-valuation or under-valuation in the transaction, the judgment of the directors as to the value of any consideration shall be conclusive.

**History.** Acts 1959, No. 148, § 480; A.S.A. 1947, § 66-4228.

### **23-69-128. Transfer of stock.**

The provisions of chapter 8 of the Uniform Commercial Code, § 4-8-101 et seq., to the extent applicable, shall apply as to stock of a domestic stock insurer.

**History.** Acts 1959, No. 148, § 481; Uniform Commercial Code was repealed A.S.A. 1947, § 66-4229.

**Publisher's Notes.** Chapter 8 of the investment securities chapter.

### **23-69-129. Dividends to stockholders.**

(a) A domestic stock insurer shall not pay any dividend to stockholders except out of that part of its available surplus funds which is derived from net profits on its business.

(b) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under § 23-69-132.

(c) A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

**History.** Acts 1959, No. 148, § 482; A.S.A. 1947, § 66-4230; Acts 2005, No. 506, § 35.

### **23-69-130. Dividends to mutual policyholders.**

(a) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.

(b) A dividend otherwise proper may be payable out of the savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

**History.** Acts 1959, No. 148, § 483; A.S.A. 1947, § 66-4231.

### **23-69-131. Unauthorized dividends prohibited.**

(a) Any director of a domestic stock or mutual insurer who votes for or concurs in the declaration or payment of a dividend, other than as authorized under § 23-69-129 or § 23-69-130, to stockholders or members shall upon conviction be guilty of a Class A misdemeanor and shall be jointly and severally liable, together with other directors likewise voting for or concurring, for any loss sustained by the insurer.

(b) Any stockholder receiving such a dividend shall be liable in the amount thereof to the insurer.

(c) The Insurance Commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid a dividend other than as so authorized.

**History.** Acts 1959, No. 148, § 484; A.S.A. 1947, § 66-4232; Acts 2005, No. 1994, § 206.



**23-69-132. Borrowed surplus.**

(a) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for interest which shall or shall not constitute a liability of the insurer as to its funds other than the excess or surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with the loan.

(b) Money so borrowed, together with the interest thereon, if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but, until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(c)(1) Any loan to an insurer shall be subject to the Insurance Commissioner's approval.

(2) The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement.

(3) The loan and agreement shall be deemed approved unless, within fifteen (15) days after the date of filing, the insurer is notified of the commissioner's disapproval and the reasons therefor.

(4) The commissioner shall disapprove any proposed loan or agreement if he or she finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(d) Any loan to an insurer or substantial portion thereof shall be repaid by the insurer when no longer necessary for the purpose originally intended. No repayment of the loan shall be made by an insurer unless it is approved by the commissioner in advance.

(e) This section shall not apply to loans obtained by the insurer in the ordinary course of business from banks and other financial institutions nor to loans secured by pledge or mortgage of assets.

**History.** Acts 1959, No. 148, § 485;  
A.S.A. 1947, § 66-4233; Acts 2001, No.  
1604, § 54.

**23-69-133. Stockholders' liability.**

(a) Every holder of shares of stock of a domestic stock insurer not fully paid shall be personally liable to the insurer's creditors for the insurer's debts to an amount equal to the amount unpaid on the shares held by him or her.

(b) Anything in §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156 to the contrary notwithstanding, a holder of shares who has acquired the shares in good faith without knowledge that they were not paid in full or to the extent stated in the certificate for the shares shall not be liable either to the insurer or to its creditors for any amount beyond that shown by the certificate to be unpaid on the shares represented thereby.

(c) Any holder who derives his or her title through such a holder and who is not himself or herself a party to any fraud affecting the issuance of the shares shall have all the rights of the former owner.

**History.** Acts 1959, No. 148, § 487;  
A.S.A. 1947, § 66-4235.

### **23-69-134. Maintenance of home office and records.**

(a) Every domestic insurer shall have and maintain its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(b) Every domestic insurer shall have and maintain its assets in this state, except as to:

(1) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state;

(2) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (d) of this section;

(3) Such securities of the insurer that are readily marketable and have a maturity of one (1) year or less from the date of purchase and that are kept in safekeeping in a federally chartered bank, bank and trust company, or national bank association domiciled outside the State of Arkansas, provided that:

(A) The insurer shall maintain in its possession a safekeeping receipt for those securities evidencing uncontestable ownership; and

(B) At no time shall the insurer hold pursuant to this subdivision

(b)(3) securities in an aggregate amount in excess of the greater of:

(i) Ten percent (10%) of its assets; or

(ii) Forty percent (40%) of its surplus if a life or accident and health insurer or of its surplus to policyholders if other than a life or accident and health insurer; and

(4) In the discretion of the Insurance Commissioner, custodied securities may be held or managed inside or outside the state by a bank custodian as defined by and subject to the requirements imposed on bank custodians by rules of the State Insurance Department governing the holding and transferring of securities through a clearing corporation. In addition, custodied securities may be held or managed inside or outside the state by a securities brokerage firm meeting the following qualifications:

(A) The securities broker-dealer firm must be registered with and subject to jurisdiction of the United States Securities and Exchange Commission, maintain membership in the Securities Investor Protection Corporation, and demonstrate by its most recent audited financial statement and regulatory filings:

(i) Tangible net worth that satisfies the capital and financial requirements of a custodian as defined by rules promulgated by the department and regulatory net capital in an amount determined by the commissioner; or

(ii) Tangible net worth that satisfies the capital and financial requirements of a custodian as defined by rules promulgated by the department along with:

(a) Regulatory net capital in an amount determined by the commissioner; and

(b) Securities Investor Protection Corporation excess insurance coverage equal to or greater than the market value of the insurers' securities held by the custodian and in the form approved by the commissioner;

(B) The deposited securities with the qualified broker-dealer must be governed by a written custodial agreement governing the insurer's deposit of the insurer's securities such that the qualified broker-dealer agrees that:

(i) The qualified broker-dealer shall exercise the same due care that is expected of a fiduciary with the responsibility for the safeguarding of the insurer's custodied securities and for compliance with all provisions of the custodial agreement, whether the insurer's custodied securities are in the custodian's possession or have been deposited or redeposited by the custodian with a subcustodian;

(ii) The qualified broker-dealer shall indemnify the insurer for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers and employees or burglary, robbery, hold-up, theft, or mysterious disappearance, including loss by damage or destruction. In the event of such a loss, the custodian must promptly replace the custodied securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of custodied securities;

(iii) Custodied securities shall be segregated at all times from the proprietary assets of the broker-dealer. The broker-dealer's official records shall separately identify custodied securities owned by the insurer;

(iv) All custodied securities that are registered shall be registered in the name of the insurer or in the name of a nominee of the insurer or in the name of the custodian or its nominee or, if in a depository corporation, in the name of the depository corporation or its nominee;

(v) All activities involving the insurer's custodied securities shall be subject to the insurer's instructions, and the custodied securities shall be withdrawable upon demand by the insurer or by the commissioner at any time;



(vi) The custodian shall furnish upon request by the insurer or by the commissioner a confirmation of all purchases, sales, or transfers of custodied securities to or from the account of the insurer, reports of custodied securities sufficient to verify information reported in the insurer's annual statement filed with the department, and supporting schedules and information required in any audit of the insurer's financial statement;

(vii) The insurer or its designee or the commissioner shall at all times be entitled to examine all records maintained by the broker-dealer relating to the insurer's custodied securities;

(viii) The custodian shall not use any of the insurer's custodied securities for the broker-dealer's benefit, and none of the insurer's custodied securities shall be loaned, pledged, or hypothecated to any person or organization;

(ix) The broker-dealer shall maintain securities all risks coverage or other insurance satisfactory to the commissioner at levels considered reasonable and customary for the custodian banking industry covering the broker-dealer's duties and activities as custodian for the insurer's assets and shall describe the nature and extent of the insurance protection. Any change in the insurance protection during the term of the custodial agreement shall be promptly disclosed to the insurer;

(x) The broker-dealer is authorized and instructed by the insurer to honor any requests made by the department for information concerning the insurer's custodied securities. The department, from time to time, may request and the custodian shall furnish a detailed listing of the insurer's custodied securities and an affidavit by the broker-dealer certifying the custodian's safekeeping responsibilities relative to the custodied securities. The broker-dealer's response to such requests shall be made directly to the department and shall encompass all of the insurer's custodied securities; and

(xi) Any other requirements provided by rules and regulations of the commissioner; and

(5)(A) Government money market mutual fund or class one money market mutual fund shares held or managed by a securities broker-dealer firm which meets the standards prescribed in subdivision (b)(4)(A) of this section, subject to any limitations on domestic insurer investments of this nature which may be otherwise contained in the Arkansas Insurance Code. Provided further that no such money market mutual fund shares owned by the insurer shall be required to be issued in certificated form, nor held by the insurer in a custodian account.

(B) For purposes of this subsection:

(i) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the "Purposes and Procedures Manual of the NAIC Securities Valuation Office" or any successor publication;

(ii) "Government money market mutual fund" means a money market mutual fund that at all times:

(a) Invests only in obligations issued, guaranteed, or insured by the United States Government or collateralized repurchase agreements composed of these obligations; and

(b) Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners or any successor publication;

(iii) "Money market mutual fund" means a mutual fund that meets the conditions of 17 C.F.R. Part 270.2a-7, under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended or renumbered; and

(iv) "Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series that, in either case, is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended.

(c)(1) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under the Arkansas Insurance Code, or for such other reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of the removal or concealment of the records or assets or material part thereof from the commissioner is prohibited.

(2) Any person who removes or attempts to remove the records or assets or the material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the purpose of removing them from this state or who conceals or attempts to conceal them from the commissioner, in violation of this subsection, shall be guilty of a Class D felony.

(3) Upon any removal or attempted removal of the records or assets, or upon retention of the records or assets or material part thereof outside this state beyond the period specified in the commissioner's consent under which the records were so removed, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of § 23-68-101 et seq.

(d) This section shall not be deemed to prohibit or prevent an insurer from:

(1) Establishing and maintaining branch offices or regional home offices in other states when necessary or convenient to the transaction of its business and keeping in those offices the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by the office, as long as the records and assets are made readily available at the office for examination by the commissioner at his or her request;

(2) Having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside this state as reasonably and customarily required in the regular course of its business; or

(3) Maintaining its home office, records, and assets in another state, provided:

(A) The insurer shall keep in its home office complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kinds of insurance transacted;

(B) The insurer was maintaining its home office in another state upon January 1, 1960;

(C) All records and assets of the insurer are made readily available at the home office for examination by the commissioner at his or her request; and

(D) The insurer shall maintain a principal place of business in this state where service of process may be made as provided in §§ 23-79-204 and 23-79-205.

**History.** Acts 1959, No. 148, § 489; A.S.A. 1947, § 66-4237; Acts 1989, No. 772, § 12; 1999, No. 452, § 1; 2001, No. 1603, § 29; 2001, No. 1604, §§ 55, 56; 2005, No. 1994, § 451; 2007, No. 496, §§ 13, 14.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2007 amendment substituted "a clearing corporation" for

"Federal Reserve book entry" in (b)(4); substituted "that satisfies the capital and financial requirements of a custodian as defined by rules promulgated by the department" for "equal to or greater than one hundred million dollars (\$100,000,000)" in (b)(4)(A)(i); and substituted "that satisfies the capital and financial requirements of a custodian as defined by rules promulgated by the department" for "equal to or greater than fifty million dollars (\$50,000,000)" in (b)(4)(A)(ii)..

### 23-69-135. Evidence of disbursement required.

(a) No insurer shall make any disbursement of one thousand dollars (\$1,000) or more unless evidenced by a voucher, bill, or other document correctly describing the consideration for the payment or evidenced by a check, draft, or receipt endorsed or signed by or on behalf of the person receiving the money.

(b) If the disbursement is for services and reimbursement, the voucher shall describe the services and the expenditures.

**History.** Acts 1959, No. 148, § 490; A.S.A. 1947, § 66-4238; Acts 2001, No. 1604, § 57.

### 23-69-136. Situs of personal property for taxation.

For the purpose of state, county, and municipal taxation, the situs of all personal property belonging to a domestic insurer and located in this state shall be at the home office of the insurer.

**History.** Acts 1959, No. 148, § 491; A.S.A. 1947, § 66-4239.



**23-69-137. Management and exclusive agency contracts.**

(a)(1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the Insurance Commissioner.

(2) The contract shall be deemed approved unless disapproved by the commissioner within twenty (20) days after the date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within the twenty (20) days.

(3) Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(b) The commissioner shall disapprove any contract if he or she finds that it:

- (1) Subjects the insurer to excessive charges;
- (2) Is to extend for an unreasonable length of time;
- (3) Does not contain fair and adequate standards of performance; or
- (4) Contains other inequitable provisions which impair the proper interests of stockholders or members of the insurer.

(c) The provisions of this section shall not apply to contracts of domestic licensees governed by the provisions of:

- (1) Sections 23-63-514 and 23-63-515 of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.;
- (2) The Managing General Agents Act, § 23-64-401 et seq.; and
- (3) Section 23-63-105 concerning service contracts to perform administrative functions.

**History.** Acts 1959, No. 148, § 492;  
A.S.A. 1947, § 66-4240; Acts 1999, No.  
327, § 2.

**CASE NOTES****Compensation.**

This section precludes enforcement of exclusive agency provisions of contracts but will not necessarily make compensation portion of contracts unenforceable or preclude quantum meruit recovery of compensation. *American Accident & Life Ins. Co. v. American Pioneer Life Ins. Co.*, 247 Ark. 355, 445 S.W.2d 896 (1969).

This section does not attempt to regulate the commission an insurer may agree to pay an agent for writing policies. *American Accident & Life Ins. Co. v. American Pioneer Life Ins. Co.*, 247 Ark. 355, 445 S.W.2d 896 (1969).

**23-69-138. Impairment of capital or assets.**

(a)(1)(A) If a stock or mutual insurer becomes impaired or insolvent, the Insurance Commissioner may:

- (i) Determine the amount of the deficiency; and

(ii) Serve notice upon the insurer to make good the deficiency within thirty (30) days after service of the notice.

(B) After a hearing, the commissioner may suspend the insurer from soliciting or writing any new coverages in this state until the deficiency is made good.

(2) For the purposes of this section, “insolvent” or “impairment” means the same as defined in the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120.

(b) The deficiency may be made good:

(1) In cash;

(2) In assets eligible under § 23-63-801 et seq., which refers to investments, for the investment of the insurer’s funds;

(3) If a stock insurer, by:

(A) Reduction of the stock insurer’s capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or

(B) Amendment of its certificate of authority to cover only such kinds of insurance thereafter for which the stock insurer has sufficient capital; or

(4) If a mutual insurer, by amendment of its certificate of authority to cover only the kinds of insurance thereafter for which the mutual insurer has sufficient surplus.

(c)(1) If the deficiency is not made good and proof filed with the commissioner within the thirty-day period:

(A) The insurer shall be deemed insolvent; and

(B) The commissioner shall institute delinquency proceedings against the insurer under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 — 23-68-120.

(2)(A) However, the commissioner, upon application and submission of good cause, may extend the period that the deficiency may be made good and proof filed, but for no more than an additional thirty (30) days if the deficiency exists because of:

(i) Increased loss reserves required by the commissioner; or

(ii) Disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer’s accounts.

(B) However, acquisitions or changes of control of an impaired or insolvent domestic insurer that is or has applied to become an affiliate or subsidiary of a depository institution under federal law shall comply with the periods stated to restore capital or surplus.

(d) This section applies in addition to or in conjunction with the insurance laws of this state, including without limitation the Risk-Based Capital Act, § 23-63-1301 et seq., and § 23-63-1501 et seq.

**History.** Acts 1959, No. 148, § 493; 1977, No. 373, §§ 1, 2; A.S.A. 1947, § 66-4241; Acts 2001, No. 1604, § 58; 2003, No. 540, § 1; 2011, No. 760, § 10.

**A.C.R.C. Notes.** As enacted by Acts 2003, No. 540, § 1, subsection (d) began: “Beginning July 1, 2003”.

**Amendments.** The 2011 amendment

substituted “may” for “shall at once” in the introductory paragraph of (a); subdivided (b); deleted “if a stock insurer, or surplus, if a mutual insurer, under the Arkansas

Insurance Code” following “capital” in (b)(3)(B); inserted (b)(4); subdivided and rewrote (c)(2)(A); and rewrote (d).

### CASE NOTES

**Cited:** Hale v. State, 343 Ark. 62, 31 S.W.3d 850 (2000).

#### **23-69-139. Assessment of stockholders or members.**

(a) Any insurer receiving the Insurance Commissioner’s notice mentioned in § 23-69-138(a):

(1)(A) If a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount or surplus in addition.

(B) If any stockholder fails to pay a lawful assessment after notice given to him or her in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder, and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder’s proportionate interest in the amount of the insurer’s capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under § 23-69-138, after deducting from the proportionate interest the amount of the unpaid assessment.

(C) The insurer may pay for or issue fractional shares under this subsection;

(2) If a mutual insurer, shall levy such an assessment upon members as is provided for under § 23-69-124.

(b) Neither this section nor § 23-69-138 shall be deemed to prohibit the insurer from curing any deficiency through any lawful means other than those referred to in those sections.

**History.** Acts 1959, No. 148, § 494; A.S.A. 1947, § 66-4242.

#### **23-69-140. Mutualization of stock insurers.**

(a) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the Insurance Commissioner after a hearing thereon.

(b) The commissioner shall not approve any plan, procedure, or mutualization unless:

(1) It is equitable to stockholders and policyholders;

(2) It is subject to approval by the holders of not less than three-fourths (¾) of the insurer’s outstanding capital stock having voting



rights and by not less than two-thirds ( $\frac{2}{3}$ ) of the insurer's policyholders who vote on the plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(3) If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than one (1) year;

(4) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(5) The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by § 23-69-148 as to rights of nonconsenting stockholders, with respect to consolidation or merger of insurance corporations;

(6) The plan provides for definite conditions to be fulfilled by a designated early date upon which the mutualization will be deemed effective; and

(7) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in the states.

(c) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under § 23-68-101 et seq., or to formations of or conversions to domestic mutual holding companies under other provisions of this act. Further, with regard to proposed transactions of a domestic insurer which is a subsidiary or affiliate of a depository institution, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction, and the order shall be final upon entry, pursuant to federal law. Further, any restoration of capital or surplus or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period.

**History.** Acts 1959, No. 148, § 495; A.S.A. 1947, § 66-4243; Acts 2001, No. 1604, § 59.

**Meaning of "this act".** Acts 2001, No. 1604, codified as §§ 23-60-103, 23-60-111, 23-61-104, 23-61-106 — 23-61-108, 23-61-111, 23-62-103, 23-62-109, 23-62-205, 23-63-101, 23-63-106, 23-63-108, 23-63-205 — 23-63-207, 23-63-209, 23-63-211, 23-63-213, 23-63-214, 23-63-216, 23-63-217, 23-63-301 — 23-63-304, 23-63-506, 23-63-510, 23-63-805, 23-63-825, 23-63-838, 23-63-840, 23-63-909, 23-63-910, 23-64-231, 23-64-403, 23-66-319, 23-66-501, 23-66-507, 23-69-105 — 23-69-107, 23-69-112,

23-69-113, 23-69-132, 23-69-134, 23-69-135, 23-69-138, 23-69-140 — 23-69-144, 23-69-148 — 23-69-150, 23-69-156, 23-70-111, 23-71-103, 23-72-120, 23-74-605, 23-74-701, 23-75-102, 23-75-114, 23-77-106, 23-79-101, 23-79-102, 23-79-105 — 23-79-110, 23-79-112, 23-79-114, 23-79-115, 23-79-120, 23-79-124, 23-79-125, 23-79-128, 23-79-129, 23-79-133, 23-79-137 — 23-79-142, 23-79-146, 23-79-148, 23-79-205, 23-79-208, 23-79-209, 23-81-503, 23-86-106, 23-91-208, 23-91-209, 23-93-207, 23-96-104, 23-96-106, 23-96-110, 23-96-113, 23-96-114, 26-57-604.

**23-69-141. Converting mutual insurer to stock insurer.**

(a) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the Insurance Commissioner after a hearing thereon.

(b) The commissioner shall not approve any plan or procedure unless:

(1) It is equitable to the insurer's members;

(2) It is subject to approval by vote of not less than three-fourths ( $\frac{3}{4}$ ) of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner. If a life insurer, the right to vote may be limited to members who hold policies other than term or group policies, and whose policies have been in force for not less than one (1) year;

(3) The equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner. The equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(4) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within three (3) years prior to the date the plan was submitted to the commissioner;

(5) The plan gives each policyholder or former policyholder of the insurer entitled to participate in the purchase of stock or distribution of assets under subdivision (b)(4) of this section:

(A) A preemptive right to acquire within a designated reasonable period his or her proportionate part of all of the proposed capital stock of:

(i) The insurer; or

(ii) A holding company of the insurer formed for the purpose of facilitating a demutualization transaction under this section; and

(B) A right to apply to the exercise of the preemptive right under subdivision (b)(5)(A) of this section the amount of his or her equity in:

(i) The insurer, as determined under subdivision (b)(3) of this section; or

(ii) A holding company of the insurer formed for the purpose of facilitating a demutualization transaction under this section;

(6) Shares are offered to participating policyholders or former policyholders at a price not greater than the price offered to nonpolicyholders;

(7)(A) The plan provides for a cash payment to each policyholder or former policyholder not electing to apply his or her equity to the purchase of stock under subdivision (b)(5) of this section.

(B) The cash payment shall:

(i) Be not less than fifty percent (50%) of the amount of the equity of the policyholder or former policyholder not used for the purchase of stock; and

(ii) Together with the stock purchased under subdivision (b)(5) of this section, if any, constitute full payment and discharge of the policyholder's or former policyholder's equity as an owner of the mutual insurer; and

(8) The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half (½) of the required capital.

(c) With regard to proposed transactions of a domestic insurer which is a subsidiary or affiliate of a depository institution, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction, and the order shall be final upon entry, pursuant to federal law. Further, any restoration of capital, surplus, or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period.

(d) This section shall not apply to formations of, or insurer conversions to, domestic mutual holding companies under other provisions of the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 496; A.S.A. 1947, § 66-4244; Acts 2001, No. 1604, § 60; 2007, No. 30, §§ 1 – 3.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Amendments.** The 2007 amendment rewrote (b)(5); in (b)(6), deleted "so" preceding "offered," inserted "participating" and "or former policyholders" and substituted "the price offered to non-policyholders" for "to be thereafter offered to others, but at not more than double the par value of the shares"; and rewrote (b)(7).

## **23-69-142. Mergers and consolidations and acquisition by exchange of stock.**

(a)(1) A domestic stock insurer may merge or consolidate with one (1) or more domestic or foreign stock insurers authorized to transact insurance in this state by complying with the other applicable provisions of this chapter and subject to subsections (a) and (b) of this section.

(2) Further, any domestic stock insurance company may adopt a plan of exchange of the outstanding stock of its stockholders for the consideration herein designated to be paid or provided by a person that acquires the stock in the manner provided in this chapter by complying with the other applicable provisions of this chapter, subject to subsections (a) and (b) of this section.

(3) As consideration for the stock of a domestic insurer, the plan of exchange may provide that the acquiring person:

- (A) Transfer shares of its stock;
- (B) Transfer other securities issued by it;
- (C) Pay cash therefor;
- (D) Pay or provide other consideration; or



(E) Pay or provide any combination of the foregoing types of consideration.

(b)(1) As used in this section and §§ 23-69-146 and 23-69-147, "acquiring person" means any individual, any stock insurance corporation incorporated under the Arkansas Insurance Code or under prior laws of this state relating to the incorporation of domestic insurance corporations, any stock corporation incorporated under the Arkansas Business Corporation Act, § 4-26-101 et seq., or under prior laws of this state authorizing the establishment of business corporations and any foreign or alien stock corporation qualified to do business in Arkansas, and any foreign or alien stock insurance company authorized to do business in Arkansas.

(2) "Acquiring person" shall also be deemed to include a depository institution or any affiliate thereof as appropriate under applicable federal law.

(c)(1)(A) No merger or consolidation or exchange of stock shall be effectuated unless the plan or agreement has been filed in advance with the Insurance Commissioner and approved in writing by him or her after a hearing thereon.

(B)(i) With regard to proposed affiliations between a depository institution, or any affiliate, and an insurer, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction, and these orders shall be final upon entry, pursuant to federal law.

(ii) Further, any restoration of capital or surplus or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period.

(2) The commissioner shall give approval within a reasonable time after the filing unless he or she finds that the plan or agreement:

(A) Is contrary to law;

(B) Is inequitable to the stockholders of any domestic insurer involved; or

(C) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) In reviewing any plan or agreement, the commissioner may consider whether any proposed owner, purchaser, director, or officer of the acquiring party was subject to:

(A) Any conviction for any felony or misdemeanor, other than minor traffic violations, during the past twenty (20) years;

(B) A misconduct order by a regulatory agency or a court of competent jurisdiction or was found to be in violation of any insurance laws by a misconduct order of the commissioner or of another state's insurance commissioner;

(C) An order by a regulatory agency or a court of competent jurisdiction and was found to have committed any unfair insurance trade practice or fraud; or

(D) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory or foreign or alien country.

(d) No director, officer, agent, or employee of any insurer party to merger, consolidation, or exchange of stock shall receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in the plan or agreement.

(e) If the commissioner does not approve a plan or agreement, he or she shall so notify the insurer in writing specifying his or her reasons therefor.

(f) If any domestic insurer involved in the proposed merger, consolidation, or exchange of stock is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two (2) other states in which the insurer has in force the larger amounts of insurance, to participate in the hearing provided for under subsection (c) of this section, with full right to examine all witnesses and evidence and to offer to the commissioner such pertinent information and suggestions as they may deem proper.

(g) Any plan or proposal through which one (1) insurer or other acquiring person acquires or proposes to acquire a controlling interest of the capital stock of the domestic insurer is deemed to be a plan or proposal of merger, consolidation, or exchange of stock for purposes of this section and is subject to the requirements of subsections (c)-(f) of this section.

**History.** Acts 1971, No. 301, § 1; 1979, No. 942, § 11; A.S.A. 1947, § 66-4245; Acts 2001, No. 1604, §§ 61, 62; 2003, No. 1400, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Cross References.** The Business Corporation Act of 1987, § 4-27-101 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Sale or Merger of Domestic Insurer, 26 U. Ark. Little Rock L. Rev. 486.

Survey of Legislation, 2003 Arkansas General Assembly, Retirement and Pensions, Proceeds from Confiscated Goods, 26 U. Ark. Little Rock L. Rev. 489.

### 23-69-143. Mergers and consolidations — Mutual insurers.

(a) A domestic mutual insurer may merge or consolidate with another mutual or stock insurer under the applicable procedures prescribed by § 23-69-144, except as provided in this section.

(b) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds ( $\frac{2}{3}$ ) of the members of each mutual insurer involved voting thereon at meetings called for the

purpose pursuant to such reasonable notice and procedure as has been approved by the Insurance Commissioner. If a life insurer, the right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than one (1) year.

(c) No merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him or her in writing after a hearing thereon. The commissioner shall give approval within a reasonable time after the filing unless he or she finds such a plan or agreement:

(1) Is inequitable to the policyholders of any domestic insurer involved; or

(2) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(d) If it is proposed to merge or consolidate a mutual insurer into or with a stock insurer, the provisions of § 23-69-141, referring to converting a mutual insurer, shall apply as to the rights and equities of the members of the mutual insurer to the fullest extent deemed by the commissioner to be feasible and reasonable.

(e) If the commissioner does not approve the plan or agreement, he or she shall so notify the insurers in writing specifying his or her reasons therefor.

(f) Section 23-69-142(f) shall also apply as to mergers and consolidations of the mutual insurers.

(g) With regard to proposed transactions affecting an affiliate or subsidiary of a depository institution, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction, and these orders shall be final upon entry, pursuant to federal law. Further, any restoration of capital, surplus, or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period.

(h) This section shall not apply to formations of, or insurer conversions to, domestic mutual holding companies under other provisions of the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 498; A.S.A. 1947, § 66-4246; Acts 2001, No. 1604, § 63.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

#### **23-69-144. Agreement or adoption of plan for merger, consolidation, or plan of exchange of shares.**

(a) The directors, or a majority of them, of the corporations as desire to merge or consolidate or adopt a plan of exchange of shares pursuant to § 23-69-142 or § 23-69-143 shall enter into an agreement or adopt a plan signed by them and under the corporate seals of the respective corporations prescribing the terms and conditions of the merger or



consolidation or plan of exchange of shares, the mode of carrying the same into effect, provisions with respect to abandonment, the effective date of the proposal or method of determination thereof and stating such other facts as are deemed applicable among those necessary to be set out in articles of incorporation, as provided in § 23-69-105, as well as the manner and basis of any issuance, conversion, or exchange of shares of stock involved in the proposal, and with such other details and provisions as are deemed necessary or desirable.

(b)(1) The agreement of merger or consolidation shall be submitted to the stockholders, in the case of a stock insurer, or members, in the case of a mutual insurer, of each corporation at meetings thereof and called for the purpose of taking it into consideration. A plan of exchange of shares shall be submitted to the stockholders of the insurer to be acquired at a meeting thereof called for that purpose.

(2) Notice shall be given of the time, place, and object of the meeting to each stockholder or member of record, whether entitled to vote or not.

(3) At the meeting, the agreement or plan shall be considered and a vote by ballot, in person or by proxy, shall be taken for the adoption or rejection of the agreement or plan.

(4) If the votes of stockholders, in the case of a stock insurer, holding stock of the corporation entitling them to exercise at least a majority of the voting power, or such other proportion of the stockholders as may be prescribed in the corporation's articles of incorporation for votes on such a proposal, or, in the case of a mutual insurer, the votes of the number or proportion of members of the insurer as required under § 23-69-143(b), shall be for the adoption of the agreement or plan, then that fact shall be certified in the agreement or plan by the secretary or assistant secretary of each corporation, under the seal thereof.

(5) The agreement or plan so adopted and certified shall be signed by each constituent corporation under its seal and the hands of its president or a vice president and its secretary or an assistant secretary and acknowledged before an officer authorized by the laws of Arkansas to take acknowledgment of deeds.

(c)(1) The agreement or plan, adopted and certified as provided in subsections (a) and (b) of this section, shall be filed in duplicate originals with the Insurance Commissioner, and thence shall be taken and deemed to be the agreement and act of merger or consolidation or plan of exchange of shares of the constituent corporations, and, in the case of a consolidation, as the certificate of incorporation of the consolidated corporations.

(2) A copy of the agreement or plan certified by the commissioner shall be evidence of the performance of all antecedent acts and conditions necessary to the merger and consolidation or plan of exchange of shares and of the existence of the consolidated corporation.

(3) One (1) of the duplicate originals, bearing the file marks of the commissioner, shall be filed for record in the office of the clerk of the county court of the county in which the principal office or place of business of the merged or consolidated corporation adopting the plan of

exchange, as specified in the merger or consolidation agreement or plan of exchange, is located.

(d) Any agreement of merger or consolidation or plan of exchange may be abandoned in conformity with the terms thereof as approved by the commissioner. However, in such event, due notice of the abandonment shall be immediately transmitted to the stockholders or members of all domestic insurance corporations which are parties thereto within ten (10) days of the abandonment in a manner and form as prescribed or approved by the commissioner. With regard to proposed affiliations between a depository institution, or any affiliate thereof, and an insurer, the hearing may be cancelled and the matter concluded and the notice of abandonment issued within the period required by federal law.

**History.** Acts 1971, No. 301, § 3; A.S.A. 1947, § 66-4247; Acts 2001, No. 1604, § 64.

### **23-69-145. Effect of merger or consolidation.**

(a) When the agreement of merger or consolidation as filed with the Insurance Commissioner as required under § 23-69-144 becomes effective, the separate existence of the constituent corporations shall cease, and they shall become a single corporation in accordance with the agreement, possessing all rights, privileges, powers, franchises, and immunities of a public as well as of a private nature and being subject to all the liabilities and duties of each of the corporations so merged or consolidated, and all, and singular, the rights, privileges, powers, franchises, and immunities of each of the corporations and all property, real, personal, and mixed, and all debts owing on whatever account and all other things in action of or belonging to each of the corporations shall be vested in the surviving or consolidated corporation. All property, rights, privileges, powers, franchises, and immunities and all and every other interest shall be thereafter the property of the surviving or consolidated corporation as effectually as they were of the several and respective constituent corporations.

(b) However, all rights of creditors and all liens upon the property of any of the constituent corporations shall be preserved unimpaired, limited in lien to the property affected by the lien at the time of the merger or consolidation. All debts, liabilities, and duties of the respective constituent corporations shall thenceforth attach to the surviving or consolidated corporation and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

**History.** Acts 1971, No. 301, § 4; A.S.A. 1947, § 66-4248.

**23-69-146. Effect of exchange under plan of exchange.**

(a)(1) When the plan of exchange of shares, as filed with the Insurance Commissioner as required under § 23-69-144, becomes effective, the exchange provided for therein is considered to have been consummated, and each shareholder of the domestic stock insurance company acquired ceases to be a shareholder of the company.

(2) The ownership of all shares of the issued and outstanding stock of the company, except shares payment of the value of which is required to be made by the company under § 23-69-148, vests in the acquiring person automatically without any physical transfer or deposit of certificates representing the shares.

(3) All shares, payment of the value of which is required to be made by the company under § 23-69-148, are considered no longer outstanding shares of the company.

(4) The acquiring person thereupon becomes the sole shareholder of the domestic stock insurance company and has all the rights, privileges, immunities, and powers and, except as otherwise provided, is subject to all of the duties and liabilities to the extent provided by law of a shareholder of an insurance company organized under the laws of this state.

(b)(1) Certificates representing shares of the domestic insurance company to be acquired prior to the plan of exchange becoming effective, except certificates representing shares payment of the value of which is required under § 23-69-148, shall, after the plan of exchange becomes effective, represent:

(A) Shares of the issued and outstanding capital stock or other securities issued by the acquiring persons; and

(B) The right, if any, to receive cash or other consideration upon such terms as are specified in the plan of exchange.

(2) However, the plan of exchange may specify that all certificates shall, after the plan of exchange becomes effective, represent only the right to receive shares of stock or other securities issued by the acquiring person, or cash or other consideration or any combination thereof upon such terms as are specified in the plan of exchange.

**History.** Acts 1971, No. 301, § 5; 1979, No. 942, § 12; A.S.A. 1947, § 66-4248.1.

**23-69-147. Acquiring and acquired corporations under a plan of exchange to be separate.**

The domestic stock insurance company acquired under a plan of exchange and the acquiring person are, in all respects, separate and distinct entities with neither entity having any liability to the creditors or policyholders, if any, or shareholders of the other, for any acts or omissions of the officers, directors, shareholders, or representatives of either or both entities.



**History.** Acts 1971, No. 301, § 6; 1979, No. 942, § 13; A.S.A. 1947, § 66-4248.2.

### **23-69-148. Nonconsenting stockholders.**

(a) If any stockholder entitled to vote in any domestic insurer on a proposal to merge or consolidate, or on a proposal to adopt a plan of exchange as provided in §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, votes against the same and, at or prior to the taking of the vote, shall object thereto in writing or if any stockholder of record in the corporation, not entitled to vote thereon, at or prior to the taking of the vote, shall object thereto in writing, and if, in either case, the stockholder, within twenty (20) days after the taking of the vote, shall demand in writing that the surviving, consolidated, or acquired corporation make payment of the fair cash value of his or her stock, the surviving, consolidated, or acquired corporation, within thirty (30) days after the agreement of merger or consolidation or plan of exchange becomes effective as provided in § 23-69-144, shall pay to the objecting stockholder the fair cash value of his or her stock as of the day before the vote was taken.

(b)(1) In case of disagreement as to the fair cash value, any stockholder, or the surviving or consolidated or acquired corporation, within sixty (60) days after the agreement or plan has become effective as described in this section and upon notice to the opposite party, may petition the circuit court of the county in which the principal office of the surviving, consolidated, or acquired corporation is established to appoint, and the court shall appoint, three (3) appraisers to appraise the value of the stock.

(2) The award of the appraisers, or a majority of them, if no written objection thereto is filed by either party within ten (10) days after the award has been filed in court, shall be final and conclusive.

(3) If an objection is filed, it shall be tried summarily by the court and judgment rendered thereon.

(c) If the amount determined by the court as provided for in subsection (b) of this section is in excess of the amount as the surviving, consolidated, or acquired corporation shall have offered to pay as the fair cash value of the stock, the court shall assess against the surviving, consolidated, or acquired corporation the costs of the proceeding, including a reasonable attorney's fee to the stockholder and a reasonable fee to the appraisers, as it deems equitable. Otherwise, the costs and fees to the appraisers shall be assessed one-half (½) against the corporation and one-half (½) against the stockholder.

(d) Any party shall have the right to appeal from any judgment of the court according to then-existing laws.

(e) Unless the merger, consolidation, or plan of exchange is abandoned, any stockholder, on the making of the demand in writing as described in this section, shall cease to be a stockholder in the constituent corporation and shall have no rights with respect to the stock except the right to receive payment therefor as described in this

section. Upon payment of the agreed fair cash value of the stock or of the value of the stock under final judgment, the stockholder shall transfer his or her stock to the surviving, consolidated, or acquired corporation. In the event the surviving, consolidated, or acquired corporation fails to pay the amount of the judgment within twenty (20) days after the judgment has become final, the judgment may be collected and enforced in the manner prescribed by law for the enforcement of judgments.

(f) Each stockholder in any of the constituent corporations at the time the merger or consolidation or plan of exchange becomes effective who is entitled to vote and who does not vote against the merger or consolidation or plan of exchange and object thereto in writing as described in this section, and each stockholder in each of the constituent corporations at the time the merger or consolidation or plan of exchange becomes effective who is not entitled to vote and who does not object thereto in writing as described in this section, shall cease to be a stockholder in the constituent corporation and shall be deemed to have assented to the merger or consolidation or plan of exchange and together with the stockholders voting in favor of the merger or consolidation or plan of exchange shall be entitled to receive certificates of stock in the surviving or consolidated corporations or other distribution, in the manner and on the terms specified in the agreement of merger or consolidation or plan of exchange.

(g) With regard to proposed affiliations between a depository institution, or any affiliate thereof, and a domestic stock insurer, the procedures for nonconsenting stockholders described in this section shall be concluded within the period required by federal law.

**History.** Acts 1971, No. 301, § 7; A.S.A. 1947, § 66-4249; Acts 2001, No. 1604, § 65.

## CASE NOTES

### ANALYSIS

Attorney's Fees.  
Interest.  
Value of Stock.

#### Attorney's Fees.

Where suit under this section was demanded by Supreme Court, Supreme Court directed the trial court to award an additional sum for the services of plaintiff's attorney in the Supreme Court on the appeal. *Fitzgerald v. Investors Preferred Life Ins. Co.*, 258 Ark. 966, 530 S.W.2d 195 (1975).

#### Interest.

Stockholders were entitled to interest from the time the tender of the fair cash

value was required to be made to date of judgment. *Fitzgerald v. Investors Preferred Life Ins. Co.*, 258 Ark. 966, 530 S.W.2d 195 (1975).

#### Value of Stock.

Where corporation had not had sufficient earnings to pay dividends in the last three or more years of its corporate existence, dissenting stockholders were not entitled to the liquidation value of their stock. *Fitzgerald v. Investors Preferred Life Ins. Co.*, 258 Ark. 966, 530 S.W.2d 195 (1975).

In making appraisal of stock of dissenting stockholders, where court instructed appraiser to consider anything he might deem appropriate in connection with the appraisal and defendant did not object,

defendant could not thereafter object on the ground that the appraiser gave monetary value to the "unfairness of appellee's treatment of preferred stockholders."

Fitzgerald v. Investors Preferred Life Ins. Co., 258 Ark. 966, 530 S.W.2d 195 (1975).  
**Cited:** ERC Mtg. Group, Inc. v. Luper, 33 Ark. App. 9, 799 S.W.2d 571 (1990).

### **23-69-149. Assumption reinsurance — Stock insurers.**

(a) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof with another insurer by an agreement of assumption reinsurance. However, no agreement shall become effective unless filed with the Insurance Commissioner and approved by him or her in writing after a hearing thereon. With regard to proposed transactions between a domestic stock insurer which is a subsidiary or affiliate of a depository institution, and another insurer, the hearing shall be concluded and the order issued within the period required by federal law, and the order shall be final upon entry.

(b) The commissioner shall approve the agreement within a reasonable time after the filing unless he or she finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, he or she shall so notify the insurer in writing specifying his or her reasons therefor.

**History.** Acts 1959, No. 148, § 502;  
A.S.A. 1947, § 66-4250; Acts 2001, No. 1604, § 66.

### **23-69-150. Assumption reinsurance — Mutual insurers.**

(a) A domestic mutual insurer may reinsure all or substantially all of its insurance in force, or a major class thereof, with another insurer, stock or mutual, by an agreement of assumption reinsurance after compliance with this section. The agreement shall not become effective unless filed with the Insurance Commissioner and approved by him or her in writing after a hearing thereon. With regard to proposed transactions between a domestic mutual insurer which is a subsidiary or affiliate of a depository institution, and another insurer, the hearing shall be concluded and the order issued within the period required by federal law, and the order shall be final upon entry.

(b) The commissioner shall approve the agreement within a reasonable time after filing if he or she finds it to be fair and equitable to each domestic insurer involved and that the reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he or she shall so notify each insurer involved in writing specifying his or her reasons therefor.

(c) The plan and agreement for the reinsurance must be approved by vote not less than two-thirds ( $\frac{2}{3}$ ) of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, the right to vote may be limited to



members whose policies are other than term or group policies and have been in effect for more than one (1) year.

(d) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of the insurer pursuant to § 23-69-141, of his or her equity in the business reinsured as determined under a fair formula approved by the commissioner, which equity shall be based upon the member's equity in the reserves, assets whether or not they are admitted assets, and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

**History.** Acts 1959, No. 148, § 503;  
A.S.A. 1947, § 66-4251; Acts 2001, No.  
1604, § 67.

### **23-69-151. Voluntary dissolution — Procedure.**

(a)(1) If while a domestic stock or mutual insurer is fully solvent and it is deemed by its board of directors to be in the best interests of the insurer and its stockholders or members that the insurer should be dissolved, the board of directors may adopt a resolution to that effect and call a special meeting of its stockholders or members to consider and take action upon a proposal to dissolve the insurer corporation.

(2) The meeting shall be held upon not less than thirty (30) days' written notice to the stockholders or members in advance of the meeting.

(3) The notice shall contain a statement of the dissolution proposal and be so given in the manner provided in the insurer's bylaws as for a special meeting of stockholders or members.

(b) If, at the special meeting or any adjournment thereof, the holders of record of stock entitled to exercise two-thirds ( $\frac{2}{3}$ ) of all the voting power on the proposal, or, if a mutual insurer, two-thirds ( $\frac{2}{3}$ ) of the insurer's members present or represented by proxy at the meeting, shall by resolution consent that a dissolution shall take place, a copy of the resolution together with a list of the names and residences of the directors and officers, certified by the president or a vice president and the secretary or an assistant secretary or the treasurer or an assistant treasurer of the insurer, shall be filed in duplicate with the Insurance Commissioner, one (1) copy of which, bearing the certificate of the commissioner, shall be filed for record in the office of the county clerk of the county in which the office or principal place of business of the insurer is located in this state.

(c) The effective date of the dissolution shall be the date on which the copy of the consent provided for in subsection (b) of this section is filed with the commissioner.

(d) Whenever all the stockholders of record of a domestic stock insurer having power to vote on a proposal to dissolve, consent in writing to the dissolution, no meeting of stockholders shall be necessary, but on filing the consent, as provided in subsection (b) of this

section, the commissioner shall issue a certificate of dissolution, which must be recorded with the county clerk of the county in which the insurer's principal place of business is located in this state.

(e) No dissolution shall be effectuated, however, until after the insurer has reinsured in another authorized insurer or has otherwise terminated all its insurance then in force nor, in the case of a domestic mutual insurer, until after the proposed plan of dissolution together with the proposed plan for distribution of assets among the insurer's members has been filed with and approved by the commissioner after having been found by him or her to be fair and equitable as to the members.

**History.** Acts 1959, No. 148, § 504;  
A.S.A. 1947, § 66-4252.

### **23-69-152. Dissolution — Directors to act as trustees.**

(a) Upon the dissolution of a domestic stock or mutual insurance corporation under the provisions of § 23-69-151, or upon the expiration of the period of its corporate existence, limited by its articles of incorporation, the directors of the corporation shall be trustees thereof with full power to settle the affairs, collect the outstanding debts, sell and convey the real and personal property of the corporation, and divide its assets among its stockholders or members as entitled thereto, after paying or adequately providing for the payment of its liabilities and obligations.

(b) If a stock corporation, after paying or adequately providing for the liabilities and obligations of the holders of record holding stock in the corporation entitling them to exercise at least a majority of the voting power on a proposal to sell all the property and assets of the corporation, the directors may sell the remaining assets or any part thereof to a corporation organized under the laws of this or any other state, and take in payment therefor the stock or bonds, or both, of the corporation and distribute them among the stockholders in proportion to their interest therein. However, if any stockholder within thirty (30) days after the mailing of notice to him or her of the sale shall demand in writing that the corporation shall pay to him or her the fair cash value of his or her interest in the assets sold, then the cash value shall be determined and shall be paid by the corporation within thirty (30) days after the date the demand was received by the corporation.

(c) Vacancies in the number of trustees may be filled by the remaining trustees, but any trustee, in the case of a stock corporation, may be replaced on the vote of a majority of the stockholders.

**History.** Acts 1959, No. 148, § 505;  
A.S.A. 1947, § 66-4253.

**23-69-153. Dissolution — Continuation for suits and settling business.**

(a) All domestic stock and mutual insurance corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued for the term of three (3) years from the expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their assets, but not for the purpose of continuing business as insurers.

(b) However, as to any action, suit, or proceeding commenced by or against the corporation prior to the expiration or dissolution and with respect to any action, suit, or proceeding commenced by the corporation within three (3) years after the date of the expiration or dissolution, the corporation shall only for the purpose of the actions, suits, or proceedings so commenced be continued bodies corporate beyond the three-year period and until any judgments, orders, or decrees therein shall be fully executed.

**History.** Acts 1959, No. 148, § 506;  
A.S.A. 1947, § 66-4254.

**23-69-154. Voluntary dissolution — Distribution of assets to stockholders.**

(a) The trustees in dissolution of a domestic stock insurer under § 23-69-151, after payment of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation.

(b) After allowing for such expenses of distribution as may be reasonable, the trustees shall distribute the remaining assets of the corporation among its stockholders as entitled thereto.

**History.** Acts 1959, No. 148, § 507;  
A.S.A. 1947, § 66-4255.

**23-69-155. Liquidation — Mutual member's share of assets.**

(a) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration shall be distributed to existing persons who were its members at any time within thirty-six (36) months next preceding the date the liquidation was authorized or ordered, or the date of last termination of the insurer's certificate of authority, whichever date is the earlier.

(b) The distributive share of each member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his or her membership bear to the aggregate of all premiums so earned on the policies of all such



members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by the members, and a formula based upon the classification, for determining the equitable distributive share of each member. The classification and formula shall be subject to the approval of the Insurance Commissioner.

**History.** Acts 1959, No. 148, § 508;  
A.S.A. 1947, § 66-4256.

### **23-69-156. Nonactive corporate charter — Nullification.**

(a) As used in this section, a corporation shall be deemed to have engaged in the business of insurance as a domestic insurer if any of its officers, directors, agents, or employees has engaged in:

- (1) The writing of insurance;
- (2) The reinsurance of risks;
- (3) The handling of claims; or
- (4) Any acts necessary or incidental to writing insurance, reinsuring risks, or handling claims.

(b) The corporate charter of any corporation formed under the laws of this state more than three (3) years prior to January 1, 1960, for the purpose of becoming an insurer and which corporation within the three-year period has not at any time actively engaged in business as a domestic insurer under a certificate of authority issued to it by the Insurance Commissioner under laws then in force, is extinguished and nullified.

(c) The corporate charter of any other corporation formed under the laws of this state for the purpose of becoming an insurer, and which corporation during any period of thirty-six (36) consecutive months after January 1, 1960, is not actively engaged in business as a domestic insurer under a certificate of authority issued to it by the commissioner under laws currently in force, is not automatically extinguished and nullified at the expiration of the thirty-six-month period.

(d) The period during which a corporation referred to in subsection (c) of this section is the subject of delinquency proceedings under §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132 shall not be counted as part of any such thirty-six-month period.

(e) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of the merged or consolidated domestic insurer shall automatically be extinguished and nullified.

(f)(1) In the event a domestic insurer assumption reinsures all of the ceding domestic insurer's business in force or all except a token amount of the ceding domestic insurer's business, the commissioner, after notice and a hearing, shall make a determination and order that the ceding domestic insurer's corporate charter is extinguished or is continued in full force and effect.

(2) In making such a determination and order, the commissioner shall fully consider the equities to the stockholders, or members if the

ceding domestic insurer is a mutual, and the policyholders of the ceding domestic insurer.

(3) With regard to proposed transactions of a domestic insurer which is a subsidiary or affiliate of a depository institution, the hearing shall be concluded and the order issued within the period required by federal law, and the order shall be final upon entry.

**History.** Acts 1959, No. 148, § 509; 772, §§ 13, 14; 2001, No. 1604, § 68; A.S.A. 1947, § 66-4257; Acts 1989, No. 2005, No. 506, § 36.

## SUBCHAPTER 2 — STOCK INSURERS — INSIDER TRADING

### SECTION.

23-69-201. Definition.

23-69-202. Application of §§ 23-69-204 — 23-69-206 to registered equity securities.

23-69-203. Application of §§ 23-69-204 — 23-69-206 to foreign or domestic arbitrage transactions.

23-69-204. Statement of owners of equity securities, directors, and officers.

### SECTION.

23-69-205. Prevention of unfair use of information by owners, directors, or officers.

23-69-206. Restrictions on sale of equity securities.

23-69-207. Equity securities held in an investment account.

23-69-208. Rules and regulations.

### 23-69-201. Definition.

As used in this subchapter, unless the context otherwise requires, “equity security” means:

- (1) Any stock or similar security;
- (2) Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security;
- (3) Any such warrant or right; or
- (4) Any other security which the Insurance Commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he or she may prescribe in the public interest or for the protection of investors, to treat as an equity security.

**History.** Acts 1965, No. 107, § 6; A.S.A. 1947, § 66-4263.

### 23-69-202. Application of §§ 23-69-204 — 23-69-206 to registered equity securities.

The provisions of §§ 23-69-204 — 23-69-206 shall not apply to equity securities of a domestic stock insurance company if:

- (1) The securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended; or
- (2) The domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons

on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of §§ 23-69-204 — 23-69-206 except for the provisions of this subdivision (2).

**History.** Acts 1965, No. 107, § 7; A.S.A. Exchange Act of 1934, referred to in this section, is codified as 15 U.S.C. § 77l.  
1947, § 66-4264.

**U.S. Code.** Section 12 of the Securities

### **23-69-203. Application of §§ 23-69-204 — 23-69-206 to foreign or domestic arbitrage transactions.**

The provisions of §§ 23-69-204 — 23-69-206 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Insurance Commissioner may adopt in order to carry out the purposes of this subchapter.

**History.** Acts 1965, No. 107, § 5; A.S.A.  
1947, § 66-4262.

### **23-69-204. Statement of owners of equity securities, directors, and officers.**

Every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or officer of a domestic stock insurance company, shall file in the office of the Insurance Commissioner within ten (10) days after he or she becomes a beneficial owner, director, or officer a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of the company of which he or she is the beneficial owner. Within ten (10) days after the close of each calendar month, if there has been a change in the ownership during the month, that person shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating his or her ownership at the close of the calendar month and such changes in his or her ownership as have occurred during the calendar month.

**History.** Acts 1965, No. 107, § 1; A.S.A.  
1947, § 66-4258.

## **RESEARCH REFERENCES**

**Ark. L. Rev.** Proxy and Insider-Trading the Protection of Investors, 19 Ark. L. Rev.  
Regulation: Federal-State Cooperation in 308.

### **23-69-205. Prevention of unfair use of information by owners, directors, or officers.**

(a) For the purpose of preventing the unfair use of information which may have been obtained by a beneficial owner of more than ten percent (10%) of any class of any equity security, director, or officer by reason of



his or her relationship to the company, any profit realized by him or her from any purchase and sale, or any sale and purchase, of any equity security of the company within any period of less than six (6) months, unless the security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of the beneficial owner, director, or officer in entering into the transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months.

(b) Suit to receive the profit may be instituted in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring the suit within sixty (60) days after request or shall fail to prosecute diligently the suit thereafter. However, no suit shall be brought more than two (2) years after the date the profit was realized.

(c) This section shall not be construed to cover any transaction where the beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Insurance Commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

**History.** Acts 1965, No. 107, § 2; A.S.A. 1947, § 66-4259.

### **23-69-206. Restrictions on sale of equity securities.**

(a) It shall be unlawful for any beneficial owner of more than ten percent (10%) of any class of any equity security, director, or officer, directly or indirectly, to sell any equity security of the company if the person selling the security or his or her principal:

(1) Does not own the security sold; or

(2) If owning the security, does not deliver it against the sale within twenty (20) days thereafter or, within five (5) days after the sale, does not deposit it in the mails or other usual channels of transportation.

(b) However, no person shall be deemed to have violated this section if he or she proves that, notwithstanding the exercise of good faith, he or she was unable to make the delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

**History.** Acts 1965, No. 107, § 3; A.S.A. 1947, § 66-4260.

### **23-69-207. Equity securities held in an investment account.**

(a) The provisions of § 23-69-205 shall not apply to any purchase and sale, or sale and purchase, and the provisions of § 23-69-206 shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him or her in an investment

account, by a dealer in the ordinary course of his or her business and incident to the establishment or maintenance by him or her of a primary or secondary market, otherwise than on an exchange as defined in the Securities Exchange Act of 1934 for such a security.

(b) The Insurance Commissioner may, by such rules and regulations as he or she deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

**History.** Acts 1965, No. 107, § 4; A.S.A. 1947, § 66-4261.

**U.S. Code.** The Securities and Ex-

change Act of 1934, referred to in this section, is codified as 15 U.S.C. § 78a et seq.

### 23-69-208. Rules and regulations.

(a) The Insurance Commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him or her by this subchapter and for such purpose may classify domestic stock insurance companies, securities, and other persons or matters within his or her jurisdiction.

(b) No provision of this subchapter imposing any liability shall apply to any act done or omitted, in good faith, in conformity with any rule or regulation of the commissioner, notwithstanding that the rule or regulation, after the act or omission, may be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

**History.** Acts 1965, No. 107, § 8; A.S.A. 1947, § 66-4265.

## SUBCHAPTER 3 — MUTUAL INSURANCE HOLDING COMPANY ACT

### SECTION.

- 23-69-301. Title.
- 23-69-302. Purpose.
- 23-69-303. Definitions.
- 23-69-304. Formation of mutual insurance holding company.
- 23-69-305. Filing of proposed reorganization plan.
- 23-69-306. Hearings on proposed reorganization plan.
- 23-69-307. Approval of proposed reorganization plan.
- 23-69-308. Approval of reorganization plan by policyholders.
- 23-69-309. Issuance of certificate.
- 23-69-310. Appeal of final order.
- 23-69-311. Continuation of corporate existence.
- 23-69-312. Abandonment of reorganization plan.

### SECTION.

- 23-69-313. Mergers and acquisitions.
- 23-69-314. Membership in a mutual insurance holding company.
- 23-69-315. Annual statements.
- 23-69-316. Power of Insurance Commissioner to order production of documents.
- 23-69-317. Applicability of provisions.
- 23-69-318. Payment of compensation.
- 23-69-319. Hiring of experts.
- 23-69-320. Disclosure of confidential information.
- 23-69-321. Injunctive orders.
- 23-69-322. Promulgation of rules and regulations.
- 23-69-323. Construction.

**23-69-301. Title.**

This subchapter shall be known and may be cited as the “Mutual Insurance Holding Company Act”.

**History.** Acts 2001, No. 1726, § 1.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

**23-69-302. Purpose.**

(a)(1) The General Assembly finds and declares that it is in the public interest that a domestic mutual insurer be permitted to reorganize in a manner that preserves attributes of its mutuality while facilitating capital-raising abilities and corporate affiliations on terms and conditions that are fair and equitable to the mutual insurer’s policyholders.

(2) The General Assembly further finds that because policyholders of a mutual insurer have membership interests in the mutual insurer, the Insurance Commissioner should have broad authority in reviewing a reorganization, and the procedures and criteria to be applied by the commissioner should be flexible within the parameters of this subchapter.

(b) This subchapter shall be liberally construed to effect the legislative intent set forth in this section and shall not be interpreted to limit the powers granted to the commissioner by other laws.

**History.** Acts 2001, No. 1726, § 1.

**23-69-303. Definitions.**

For purposes of this subchapter, unless the context requires otherwise:

(1) “Commissioner” means the Insurance Commissioner;

(2) “Intermediate stock holding company” means a holding company of which at least a majority of the voting securities are owned by a mutual insurance holding company and which directly owns all the voting securities of a reorganized stock insurer;

(3) “Mutual insurance holding company” means a holding company based on a mutual plan which at all times owns a majority of the voting securities of a single intermediate stock holding company or, if no such intermediate stock holding company exists, which owns a majority of the voting securities of a reorganized stock insurer;

(4) “Reorganized stock insurer” means a stock insurer subsidiary which results from a reorganization of a domestic mutual insurer under § 23-69-304(a)(1) or (a)(2) and in compliance with this subchapter; and

(5) “Voting securities” means securities of any class or any ownership interest having voting power for the election of directors, trustees, or



management, other than securities having voting power only because of the occurrence of a contingency.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-304. Formation of mutual insurance holding company.**

(a) A domestic mutual insurer, upon approval of the Insurance Commissioner, may reorganize by:

- (1) Forming a mutual insurance holding company;
- (2) Merging its policyholders' membership interests into the mutual insurance holding company; and
- (3) Continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(b) A domestic mutual insurer, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into an existing mutual insurance holding company formed under subdivision (a)(1) of this section and by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(c) All of the initial shares of the capital stock of a reorganized stock insurer which has reorganized as described in subdivision (a)(1) or subdivision (a)(2) of this section shall be issued to the mutual insurance holding company or to a single intermediate stock holding company.

(d)(1) Policyholders of a domestic mutual insurer which has reorganized as described in subdivision (a)(1) or subdivision (a)(2) of this section shall be members of the mutual insurance holding company, and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company.

(2) The mutual insurance holding company shall provide its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization.

(3) The reorganization shall not reduce, limit, or affect the number or identity of the policyholders who may become members of the mutual insurance holding company or secure for individuals composing management any unfair advantage through or connected with the reorganization.

(e)(1) A mutual insurance holding company or an intermediate stock holding company formed under this subchapter shall not be authorized to transact the business of insurance.

(2) A mutual insurance holding company formed under this subchapter shall not issue stock.

(3) The commissioner shall have jurisdiction over a mutual insurance holding company and an intermediate stock holding company to ensure that policyholder's interests are protected.

(4) A mutual insurance holding company and an intermediate stock holding company shall be treated as domestic insurers subject to the conversion provisions of § 23-69-141 and § 23-68-101 et seq. regarding the rehabilitation and liquidation of insurance companies.

(5) The aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than forty-nine percent (49%) of the mutual insurance holding company's stock in an intermediate stock holding company or a reorganized stock insurer.

(6) At least fifty percent (50%) of the net worth of a mutual insurance holding company, as determined by generally accepted accounting practices, shall be invested in insurers.

(7)(A) If any proceeding under § 23-68-101 et seq. regarding the rehabilitation and liquidation of insurance companies is brought against a reorganized stock insurer, the mutual insurance holding company and intermediate stock holding company shall become parties to the proceedings.

(B) All of the assets of the mutual insurance holding company and intermediate stock holding company are deemed assets of the estate of the reorganized stock insurer to the extent necessary to satisfy claims against the reorganized stock insurer.

(8) No distribution to members of a mutual insurance holding company may occur without prior written approval of the commissioner and only upon the commissioner's satisfaction that such a distribution is fair and equitable to policyholders as members of the mutual insurance holding company.

(9) No solicitation for the sale of the stock of an intermediate stock holding company or a reorganized stock insurer may be made without the commissioner's prior written approval.

(10) A mutual insurance holding company or an intermediate stock holding company shall not voluntarily dissolve without the approval of the commissioner.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-305. Filing of proposed reorganization plan.**

A domestic mutual insurer shall file a proposed plan of reorganization approved by a vote of not less than two-thirds ( $\frac{2}{3}$ ) of the members of its board of directors for review and approval with the Insurance Commissioner. The proposed plan of reorganization shall be accompanied by a nonrefundable fee of one thousand dollars (\$1,000). A plan of reorganization shall include the following, at a minimum:

(1) An analysis of the benefits and risks attendant to the proposed reorganization, including the rationale and comparative benefits and risks of a demutualization;

(2) A statement of how the plan is fair and equitable to the policyholders;

(3) Information sufficient to demonstrate that the financial condition of the mutual insurer will not be diminished upon reorganization;

(4) Provisions to ensure immediate membership in the mutual insurance holding company for all existing policyholders of the mutual insurer;

(5) Provisions for membership interests for future policyholders of the reorganized stock insurer;

(6) Provisions to ensure that, in the event of proceedings for rehabilitation or liquidation involving a stock insurer subsidiary of the mutual insurance holding company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurer subsidiary;

(7) Provisions for periodic distribution of accumulated mutual insurance holding company earnings;

(8) Certified copies of the proposed articles of incorporation and bylaws of the mutual insurance holding company, intermediate stock holding company, and reorganized stock insurer or proposed amendments thereto as necessary to effectuate reorganization;

(9) A certification that the plan of reorganization has been duly adopted by a vote of not less than two-thirds ( $\frac{2}{3}$ ) of the members of the board of directors of the mutual insurer;

(10) A certification adopted by not less than two-thirds ( $\frac{2}{3}$ ) of the members of the board of directors of the mutual insurer that the plan of reorganization is fair and equitable to the policyholders;

(11) The names, addresses, and occupational information of all corporate officers and all members of the board of directors of the proposed mutual insurance holding company in the case of a reorganization described in § 23-69-304(a)(1);

(12) A description of the nature and content of the annual report and financial statement to be sent by the mutual insurance holding company to each member;

(13) A description of the number of members of the board of directors of the mutual insurance holding company required to be policyholders;

(14) A description of any plans for the initial sale of stock of the intermediate stock holding company or reorganized stock insurer;

(15) A form of the proposed notice to be mailed by the mutual insurer to its policyholders as required in § 23-69-308; and

(16) Any other information requested by the commissioner.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-306. Hearings on proposed reorganization plan.**

The Insurance Commissioner shall conduct a public hearing regarding a proposed plan of reorganization within one hundred twenty (120) days after the date the completed proposed plan of reorganization is filed under § 23-69-305, unless extended by the commissioner for good cause. Any interested person may appear or otherwise be heard at the public hearing. The commissioner, in his or her discretion, may continue the public hearing for a reasonable period of time not to exceed sixty (60) days. The mutual insurer shall give such reasonable notice of the public hearing as the commissioner, in his or her discretion, may require.



**History.** Acts 2001, No. 1726, § 1.

### **23-69-307. Approval of proposed reorganization plan.**

(a) The Insurance Commissioner shall issue an order approving or disapproving a proposed plan of reorganization within thirty (30) days after the close of the public hearing as required by § 23-69-306.

(b) The commissioner shall not approve a proposed plan of reorganization unless he or she finds that:

(1) The plan of reorganization is fair and equitable to the policyholders;

(2) The plan of reorganization does not deprive the policyholders of their property rights or due process of law; and

(3) The reorganized stock insurer would meet the minimum requirements to be issued a certificate of authority by the commissioner to transact the business of insurance in this state, and the continued operations of the reorganized stock insurer would not be hazardous to future policyholders and the public.

(c) If the commissioner approves a plan of reorganization, the commissioner shall also publish notification of the issuance of the order in a legal newspaper in Pulaski County and in the county of domicile of the mutual insurer if different from Pulaski County.

(d) If the commissioner approves a plan of reorganization, the approval shall expire if the reorganization is not completed within one hundred eighty (180) days after the date of approval, unless extended by the commissioner for good cause, or within sixty (60) days if required by the Gramm-Leach-Bliley Act for depository corporation transactions.

(e) If the commissioner disapproves a plan of reorganization, the commissioner shall issue an order setting forth specific findings for the disapproval.

**History.** Acts 2001, No. 1726, § 1.

primarily at 12 U.S.C. § 1811 et seq., 12

**U.S. Code.** The Gramm-Leach-Bliley Act referred to in this section is codified

U.S.C. § 1843 et seq., 15 U.S.C. § 78c et seq., and 15 U.S.C § 6701.

### **23-69-308. Approval of reorganization plan by policyholders.**

(a)(1) Within forty-five (45) days after the date of the Insurance Commissioner's approval of a plan of reorganization under § 23-69-307, unless extended by the commissioner for good cause, the mutual insurer shall hold a meeting of its policyholders at a reasonable time and place to vote upon the plan of reorganization.

(2) The mutual insurer shall give notice at least thirty (30) days before the time fixed for the meeting, by first-class mail to the last-known address of each policyholder, that the plan of reorganization will be voted upon at a regular or special meeting of the policyholders. The notice shall include:

(A) A brief description of the plan of reorganization and a statement that the commissioner has approved the plan of reorganization; and

(B) A written proxy permitting the policyholder to vote for or against the plan of reorganization.

(3) The entity to which any group insurance policy is issued, and not any person covered under the group insurance policy, shall be considered the policyholder for purposes of voting.

(4) A plan of reorganization shall be approved only if not less than two-thirds ( $\frac{2}{3}$ ) of the policyholders voting in person or by proxy at the meeting vote in favor of such plan of reorganization. Each policyholder shall be entitled to only one (1) vote, regardless of the number of policies owned by the policyholder. The commissioner shall supervise and direct the conduct of the vote on the plan of reorganization as necessary to ensure that the vote is fair and consistent with the requirements of this section.

(b) If a mutual insurer complies substantially and in good faith with the notice requirements of this section, the mutual insurer's failure to give any policyholder any required notice does not impair the validity of any action taken under this section.

(c) If the meeting of policyholders to vote upon the plan of reorganization is held coincident with the mutual insurer's annual meeting of the policyholders, only one (1) combined notice of meeting is required.

(d) The form of any proxy shall be filed with and approved by the commissioner.

(e) For purposes of voting, "policyholders" means the policyholders of the mutual insurer on the day the plan of reorganization is initially approved by the board of directors of the mutual insurer.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-309. Issuance of certificate.**

(a) The Insurance Commissioner shall issue a certificate of authority to a reorganized stock insurer when the mutual insurer files with the commissioner a:

(1) Certificate stating that all of the conditions set forth in the plan of reorganization have been satisfied, so long as the board of directors of the mutual insurer has not abandoned the plan of reorganization under § 23-69-312; and

(2) Certificate from the mutual insurer setting forth the vote and certifying that the plan of reorganization was approved by not less than two-thirds ( $\frac{2}{3}$ ) of the policyholders voting in person or by proxy on the plan of reorganization.

(b)(1) The reorganization shall be effective upon the issuance of a certificate of authority by the commissioner.

(2) Upon issuance of the certificate of authority, the insurer's articles of incorporation shall be treated as amended in compliance with § 23-69-107.

**History.** Acts 2001, No. 1726, § 1.

**23-69-310. Appeal of final order.**

Any person affected by a final order issued under this subchapter shall have the right to appeal the order to the Pulaski County Circuit Court. The appeal shall be in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**History.** Acts 2001, No. 1726, § 1.

**23-69-311. Continuation of corporate existence.**

Corporate existence of a mutual insurer reorganizing under this subchapter shall not terminate, but the reorganized stock insurer shall be deemed to be a continuation of the mutual insurer and to have been organized on the date the mutual insurer was originally organized.

**History.** Acts 2001, No. 1726, § 1.

**23-69-312. Abandonment of reorganization plan.**

By not less than a two-thirds ( $\frac{2}{3}$ ) vote of the members of its board of directors and with the approval of the Insurance Commissioner, a mutual insurer may abandon a plan of reorganization at any time before the issuance of the certificate of authority by the commissioner. Upon such abandonment, all rights and obligations arising out of the plan of reorganization shall terminate, and the mutual insurer shall continue to conduct its business as a domestic mutual insurer as though no plan of reorganization had ever been adopted.

**History.** Acts 2001, No. 1726, § 1.

**23-69-313. Mergers and acquisitions.**

(a) Subject to applicable requirements of this subchapter and the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., a mutual insurance holding company may:

(1) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed under this subchapter or any similar entity organized under laws of any other state;

(2) Either alone or together with one (1) or more intermediate stock holding companies or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this subchapter or the law of its state of organization;

(3) Together with one (1) or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company; or

(4) Acquire a stock insurance company through the merger of the stock insurance company with a stock insurance company subsidiary of the mutual insurance holding company.



(b)(1) A merger or acquisition under this section is subject to the applicable procedures prescribed by the laws applying to domestic insurance companies, except as otherwise provided in this subsection.

(2) The commissioner may retain, at the expense of the mutual insurance company, any attorneys, actuaries, accountants, economists, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed merger or acquisition.

(3) The plan and agreement for merger shall be submitted to and approved by vote of two-thirds ( $\frac{2}{3}$ ) of those members of any domestic mutual insurance holding company involved in the merger who vote either in person or by proxy thereon at a lawful meeting called for that purpose, after reasonable notice and in accordance with procedure approved by the commissioner.

(4) No such merger shall be effectuated unless the plan and agreement have been filed with the commissioner and approved by him or her in advance. The commissioner shall give such approval unless he or she finds that such a plan or agreement:

(A) Is inequitable to the policyholders of any domestic insurer involved in the merger or the members of any domestic mutual insurance holding company involved in the merger; or

(B) Would substantially reduce the security of and service to be rendered to policyholders of a domestic insurer in this state.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-314. Membership in a mutual insurance holding company.**

A membership interest in a mutual insurance holding company does not constitute a security under the laws of this state.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-315. Annual statements.**

A mutual insurance holding company shall:

(1) File with the Insurance Commissioner by March 1 of each year an annual statement consisting of an income statement, balance sheet, and cash flows prepared in accordance with generally accepted accounting practices and a confidential statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company; and

(2) Have an annual audit by an independent certified public accountant in a form approved by the commissioner and shall file the audit on or before June 1 of each year for the year ending December 31 immediately preceding.

**History.** Acts 2001, No. 1726, § 1.

**23-69-316. Power of Insurance Commissioner to order production of documents.**

The Insurance Commissioner shall have the power to order production of any records, books, or other information and papers in the possession of a mutual insurance holding company or its affiliates as are reasonably necessary to ascertain the financial condition of the reorganized stock insurer or to determine compliance with this subchapter.

**History.** Acts 2001, No. 1726, § 1.

**23-69-317. Applicability of provisions.**

Nothing contained in this subchapter shall be construed to prohibit demutualization of a mutual insurance holding company under § 23-69-141.

**History.** Acts 2001, No. 1726, § 1.

**23-69-318. Payment of compensation.**

(a)(1) No director, officer, employee, or agent of the mutual insurer and no other person shall receive any fee, commission, or other valuable consideration whatsoever, other than his or her usual regular salary and compensation, for in any manner aiding, promoting, or assisting in a plan of reorganization, except as set forth in the plan of reorganization approved by the Insurance Commissioner.

(2) Subdivision (a)(1) of this section shall not prohibit a management-incentive compensation program which is contained in the plan of reorganization and approved by the commissioner to be adopted upon reorganization to the reorganized stock insurer or prohibit such a program to be later adopted by the reorganized stock insurer.

(b) Subdivision (a)(1) of this section shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys, accountants, actuaries, and investment bankers for services performed in the independent practice of their professions, even though any such person is also a member of the board of directors of the mutual insurer.

**History.** Acts 2001, No. 1726, § 1.

**23-69-319. Hiring of experts.**

For purposes of determining whether a plan of reorganization meets the requirements of this subchapter or in connection with any other matters relating to development of a plan of reorganization, the Insurance Commissioner may engage the services of experts. All reasonable costs related to the review of a plan of reorganization or such other matters, including those costs attributable to the use of experts, shall be paid by the mutual insurer making the filing or initiating discussions with the commissioner about such matters.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-320. Disclosure of confidential information.**

All information, documents, and copies obtained by or disclosed to the Insurance Commissioner or any other person in the course of preparing, filing, and processing an application to reorganize under § 23-69-305, other than information or documents distributed to policyholders in connection with the meeting of policyholders under § 23-69-308, or filed or submitted as evidence in connection with the public hearing under § 23-69-306, shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication, in which event he or she may publish all or any part in such manner as he or she may deem appropriate.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-321. Injunctive orders.**

Whenever it appears to the Insurance Commissioner that any person or any director, officer, employee, or agent of the person has committed or is about to commit a violation of this subchapter or of any rule, regulation, or order of the commissioner, the commissioner may apply to the Pulaski County Circuit Court for an order enjoining such person, director, officer, employee, or agent from violating or continuing to violate this subchapter or any such rule, regulation, or order and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-322. Promulgation of rules and regulations.**

The Insurance Commissioner may adopt and promulgate rules and regulations and issue orders to carry out this subchapter.

**History.** Acts 2001, No. 1726, § 1.

### **23-69-323. Construction.**

This subchapter is intended to supplement the Arkansas Insurance Code. Further, this subchapter is not intended to and shall not be construed to conflict with existing sections of the Arkansas Insurance Code, including, but not limited to, §§ 23-69-141, 23-70-123, 23-72-119,



23-73-117, 23-75-122, or other applicable sections of the Arkansas Insurance Code.

**History.** Acts 2001, No. 1726, § 1.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## CHAPTER 70

### RECIPROCAL INSURERS

#### SECTION.

- 23-70-101. Definitions.
- 23-70-102. Scope.
- 23-70-103. Insuring powers.
- 23-70-104. Name used in suits.
- 23-70-105. Surplus funds required.
- 23-70-106. Organization.
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- 23-70-108. Power of attorney.
- 23-70-109. Modifications.
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#### SECTION.

- 23-70-113. Annual statement.
- 23-70-114. Method of determining financial condition.
- 23-70-115. Subscribers generally.
- 23-70-116. Subscribers' advisory committee.
- 23-70-117. Subscribers' liability.
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- 23-70-121. Distribution of savings.
- 23-70-122. Subscribers' share in assets.
- 23-70-123. Merger or conversion.
- 23-70-124. Impaired reciprocals.

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**Cross References.** Manner of payment of claims, §§ 23-63-107, 23-66-321.

### RESEARCH REFERENCES

**Am. Jur.** 43 Am. Jur. 2d, Ins., § 77 et seq.

**C.J.S.** 46 C.J.S., Ins., § 1718 et seq.

### CASE NOTES

#### **Legislative Authority.**

The state, in the exercise of its police power, may fully and completely regulate the business of insurance and it may prescribe the conditions under which persons or corporations outside the state may exchange insurance with persons or corpo-

rations within the state. *Lewelling v. Manufacturing Wood-Workers' Underwriters*, 140 Ark. 124, 215 S.W. 258 (1919) Criticized by *Taylor v. Magnolia Pipe Line Co.*, 100 F. Supp. 457 (D. Ark. 1951) (decision under prior law).

#### **23-70-101. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Attorney" refers to the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation. The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to

transact insurance in this state, shall not, by virtue of discharge of its duties as the attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations;

(2) "Reciprocal" insurance is that resulting from an interexchange among persons, known as "subscribers", of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all the persons; and

(3) "Reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

**History.** Acts 1959, No. 148, §§ 510, 511, 515; A.S.A. 1947, §§ 66-4301, 66-4302, 66-4306.

### **23-70-102. Scope.**

(a) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

(b) Existing authorized reciprocal insurers shall comply with the provisions of this chapter after January 1, 1960.

**History.** Acts 1959, No. 148, § 512; A.S.A. 1947, § 66-4303.

### **23-70-103. Insuring powers.**

(a) A reciprocal insurer, upon qualifying therefor as provided for by the Arkansas Insurance Code, may transact any kinds of insurance defined by the Arkansas Insurance Code, other than life or title insurances.

(b) Such an insurer may purchase reinsurance, and may grant reinsurance as to any kind of insurance it is authorized to transact.

**History.** Acts 1959, No. 148, § 513; A.S.A. 1947, § 66-4304.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-70-104. Name used in suits.**

A reciprocal insurer shall:

(1) Have and use a business name. The name shall include the word "reciprocal", "interinsurer", "interinsurance", "exchange", "underwriters", or "underwriting"; and

(2) Sue and be sued in its own name.

**History.** Acts 1959, No. 148, § 514; A.S.A. 1947, § 66-4305.

## CASE NOTES

## ANALYSIS

In General.  
Suits.

**In General.**

Suit may be brought against the association in its associated name. *Lewelling v. Manufacturing Wood-Workers' Underwriters*, 140 Ark. 124, 215 S.W. 258

(1919) Criticized by *Taylor v. Magnolia Pipe Line Co.*, 100 F. Supp. 457 (D. Ark. 1951) (decision under prior law).

**Suits.**

Where no reciprocal or interinsurance is involved, an association is not suable as an entity. *Atex Mfg. Co. v. Lloyd's of London*, 139 F. Supp. 314 (W.D. Ark. 1955) (decision under prior law).

**23-70-105. Surplus funds required.**

(a) A domestic reciprocal insurer formed pursuant to this chapter, if it has otherwise complied with the applicable provisions of the Arkansas Insurance Code, may be authorized to transact insurance if it has and maintains surplus funds as follows:

(1) To transact property insurance, surplus funds of not less than the amount required of a foreign reciprocal insurer under § 23-63-205;

(2) To transact casualty insurance, surplus funds of not less than the amount required of a foreign reciprocal insurer under § 23-63-205; and

(3) The surplus funds required in this subsection shall be deposited or adjusted by the July 1 following the filing of the annual statement.

(b) In addition to surplus required to be maintained under subsection (a) of this section, the insurer shall have, when first so authorized, expendable surplus in an amount as required of a like foreign reciprocal insurer under § 23-63-207.

(c) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of the Arkansas Insurance Code therefor and possesses and so maintains surplus funds in an amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance.

**History.** Acts 1959, No. 148, § 516; A.S.A. 1947, § 66-4307; Acts 2001, No. 1555, § 11.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**23-70-106. Organization.**

(a) Twenty-five (25) or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the Insurance Commissioner for a certificate of authority to transact insurance.

(b) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority a declaration setting forth:

(1) The name of the insurer;



- (2) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
  - (3) The kinds of insurance proposed to be transacted;
  - (4) The names and addresses of the original subscribers;
  - (5) The designation and appointment of the proposed attorney, and a copy of the power of attorney;
  - (6) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;
  - (7) The powers of the subscribers' advisory committee, and the names and terms of office of the members thereof;
  - (8) That all moneys paid to the insurer shall be held in the name of the insurer and for the purposes specified in the subscribers' agreement, after deducting therefrom any sum payable to the attorney;
  - (9) A copy of the subscribers' agreement;
  - (10) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each such subscriber the full premium deposit required for the policy applied for, for a term of not less than six (6) months, at an adequate rate theretofore filed with and approved by the commissioner;
  - (11) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by § 23-70-105 is on hand; and
  - (12) A copy of each policy, endorsement, and application form it then proposes to issue or use.
- (c) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgement of deeds.

**History.** Acts 1959, No. 148, § 517;  
A.S.A. 1947, § 66-4308.

### **23-70-107. Certificate of authority.**

- (a) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.
- (b) The Insurance Commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any provision of the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 518;  
A.S.A. 1947, § 66-4309.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### **23-70-108. Power of attorney.**

- (a) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.
- (b) The power of attorney must set forth:

- (1) The powers of the attorney;
  - (2) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
  - (3) The general services to be performed by the attorney;
  - (4) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
  - (5) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy.
- (c) The power of attorney may:
- (1) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
  - (2) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
  - (3) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
  - (4) Contain other lawful provisions deemed advisable.
- (d) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable.

**History.** Acts 1959, No. 148, § 519;  
A.S.A. 1947, § 66-4310.

### **23-70-109. Modifications.**

- (a) Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee.
- (b) No modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

**History.** Acts 1959, No. 148, § 520;  
A.S.A. 1947, § 66-4311.

### **23-70-110. Attorney's bond required — Exception.**

- (a)(1) Concurrently with the filing of the declaration provided for in § 23-70-106, the attorney of a domestic reciprocal insurer shall file with the Insurance Commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his or her bond as set forth in subdivision (a)(2) of this section. The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the commissioner's approval.
- (2) The bond shall be in the penal sum of twenty-five thousand dollars (\$25,000), aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer

coming into his or her hands and that he or she will not withdraw nor appropriate to his or her own use from the funds of the insurer any moneys or property to which he or she is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty (30) days' advance notice in writing of cancellation is given both the attorney and the commissioner.

(b) In lieu of the bond required under subsection (a) of this section, the attorney may maintain on deposit through the office of the commissioner a like amount in cash or in value of securities eligible for deposit under § 23-63-903 and subject to the same conditions as the bond.

(c) Action on the attorney's bond or to recover against any deposit made in lieu of the attorney's bond may be brought at any time by one (1) or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of the bond.

**History.** Acts 1959, No. 148, §§ 521-523; A.S.A. 1947, §§ 66-4312 — 66-4314.

### **23-70-111. Service of process — Judgment.**

(a) Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at his or her principal offices. Alternatively, service may be made by use of an Arkansas resident agent for service of process appointed on behalf of the insurer in accordance with §§ 23-63-301 et seq., on and after January 1, 2003.

(b) Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though personal service of process was had upon each subscriber.

**History.** Acts 1959, No. 148, § 524; A.S.A. 1947, § 66-4315; Acts 2001, No. 1604, § 69.

### **23-70-112. Contributions to insurer.**

(a) The attorney or other parties may advance to a domestic reciprocal insurer, upon reasonable terms, such funds as it may require from time to time in its operations.

(b) Sums so advanced shall not be treated as a liability of the insurer and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus.

(c) No withdrawal or repayment shall be made without the advance approval of the Insurance Commissioner.



(d) This section does not apply as to bank loans or to loans for which security is given.

**History.** Acts 1959, No. 148, § 525;  
A.S.A. 1947, § 66-4316.

### **23-70-113. Annual statement.**

(a) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

(b) The statement shall be supplemented by such information as may be required by the Insurance Commissioner relative to the affairs and transactions of the attorney insofar as they pertain to the reciprocal insurer.

**History.** Acts 1959, No. 148, § 526;  
A.S.A. 1947, § 66-4317.

### **23-70-114. Method of determining financial condition.**

In determining the financial condition of a reciprocal insurer, the Insurance Commissioner shall apply the following rules:

(1) He or she shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis;

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for ninety (90) days shall first be charged against the surplus deposit;

(3) The surplus deposits of subscribers shall not be charged as a liability;

(4) All premium deposits delinquent less than ninety (90) days shall be allowed as assets;

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset;

(6) The contingent liability of subscribers shall not be allowed as an asset; and

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

**History.** Acts 1959, No. 148, § 527;  
A.S.A. 1947, § 66-4318.

### **23-70-115. Subscribers generally.**

(a) Individuals, partnerships, and corporations of this state may make application, enter into agreement for, and hold policies or contracts in or with, and be a subscriber of, any domestic, foreign, or alien reciprocal insurer.

(b) Any corporation organized under the laws of this state, in addition to the rights, powers, and franchises specified in its articles of

incorporation, shall have full power and authority as a subscriber to exchange insurance contracts through a reciprocal insurer.

(c) The right to exchange contracts is declared to be incidental to the purposes for which the corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations.

(d) Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees, or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships, and corporations to the same extent that individuals, partnerships, and corporations are herein authorized to exchange reciprocal interinsurance contracts.

(e) Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of the contract but shall not be personally liable upon the contract by reason of acting in a representative capacity.

**History.** Acts 1959, No. 148, § 528;  
A.S.A. 1947, § 66-4319.

### **23-70-116. Subscribers' advisory committee.**

(a) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(b) Not less than two-thirds ( $\frac{2}{3}$ ) of the committee shall be subscribers, other than the attorney or any person employed by, representing, or having a financial interest in the attorney.

(c) The committee shall:

- (1) Supervise the finances of the insurer;
- (2) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
- (3) Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and
- (4) Have such additional powers and functions as may be conferred by the subscribers' agreement.

**History.** Acts 1959, No. 148, § 529;  
A.S.A. 1947, § 66-4320.

### **23-70-117. Subscribers' liability.**

(a) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several, and proportionate liability and not a joint liability.

(b) Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his or her policy was in force. The

contingent liability may be at the rate of not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in § 23-70-119.

(c) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

(d)(1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty (30) days.

(2) Any judgment shall be binding upon each subscriber only in such proportion as his or her interests may appear and in an amount not exceeding his or her contingent liability, if any.

**History.** Acts 1959, No. 148, §§ 530, 531; A.S.A. 1947, §§ 66-4321, 66-4322.

### **23-70-118. Assessments.**

(a) Assessments may be levied from time to time upon subscribers of a domestic reciprocal insurer, liable therefor under the terms of their policies, by the attorney upon approval in advance by the subscribers' advisory committee and the Insurance Commissioner or by the commissioner in liquidation of the insurer.

(b) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his or her aggregate contingent liability as computed in accordance with § 23-70-119, shall be computed by applying to the premiums earned on the subscribers' policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during the period upon all policies subject to the assessment.

(c) In computing the earned premiums for the purposes of this section, the gross premiums received by the insurer for the policy shall be used as a base, solely deducting therefrom charges not recurring upon the renewal or extension of the policy.

(d) No subscriber shall have an offset against any assessment for which he or she is liable on account of any claim for unearned premiums or losses payable.

(e) Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for and shall pay his or her share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his or her policy is in force or within one (1) year after its termination, he or she is notified by either the attorney or the commissioner of his or her intentions to levy the assessment; or

(2) An order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while his or her policy is in force or within one (1) year after its termination.



**History.** Acts 1959, No. 148, §§ 532, 533; A.S.A. 1947, §§ 66-4323, 66-4324.

### **23-70-119. Aggregate liability.**

No one (1) policy or subscriber as to the policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one (1) calendar year in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on the policy during that year.

**History.** Acts 1959, No. 148, § 534; A.S.A. 1947, § 66-4325.

### **23-70-120. Nonassessable policies.**

(a) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, then, upon application of the attorney and as approved by the subscribers' advisory committee, the Insurance Commissioner shall issue his or her certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all the surplus remains unimpaired.

(b) Upon impairment of the surplus, the commissioner shall forthwith revoke the certificate. The revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid. However, after the revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

**History.** Acts 1959, No. 148, § 535; A.S.A. 1947, § 66-4326.

### **23-70-121. Distribution of savings.**

(a) A reciprocal insurer may return to its subscribers from time to time any unused premiums, savings, or credits accruing to their accounts.

(b) Any distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers, but the distribution may vary as to classes of subscribers based upon the experience of those subscribers.

**History.** Acts 1959, No. 148, § 536; A.S.A. 1947, § 66-4327.

**23-70-122. Subscribers' share in assets.**

Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in § 23-70-112, and the return of any unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were subscribers within the twelve (12) months prior to the last termination of its certificate of authority, according to such reasonable formula as the Insurance Commissioner may approve.

**History.** Acts 1959, No. 148, § 537;  
A.S.A. 1947, § 66-4328.

**23-70-123. Merger or conversion.**

(a) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds ( $\frac{2}{3}$ ) of its subscribers who vote on the merger pursuant to due notice and the approval of the Insurance Commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(b) The stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(c) The commissioner shall not approve any plan for the merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer as determined in accordance with § 23-70-122 and a reasonable length of time within which to exercise the right.

**History.** Acts 1959, No. 148, § 538;  
A.S.A. 1947, § 66-4329.

**23-70-124. Impaired reciprocals.**

(a) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall immediately make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(b) If the attorney fails to make up the deficiency or to make the assessment within thirty (30) days after the Insurance Commissioner orders the attorney to do so or if the deficiency is not fully made up within sixty (60) days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132.

(c) If liquidation of the insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

**History.** Acts 1959, No. 148, § 539;  
A.S.A. 1947, § 66-4330.

## CHAPTER 71

### STIPULATED PREMIUM INSURERS

#### SECTION.

- 23-71-101. Definition.
- 23-71-102. Scope.
- 23-71-103. Other provisions applicable.
- 23-71-104. Incorporation, reincorporation, or formation prohibited.
- 23-71-105. Reserves and nonforfeiture provisions required.
- 23-71-106. Use of "stipulated premium" prohibited — Exception.
- 23-71-107. Articles of incorporation and capital stock.
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#### SECTION.

- 23-71-109. Insuring powers.
- 23-71-110. Guaranty fund deposit.
- 23-71-111. Policies — Liability.
- 23-71-112. Benefits not subject to attachment.
- 23-71-113. Insolvency.
- 23-71-114. Personal liability.
- 23-71-115. Merger, consolidation, or adoption of plan of exchange.
- 23-71-116. Conversion to legal reserve insurer.

**Cross References.** Method of payment of claims, § 23-66-321.

**Effective Dates.** Acts 1967, No. 393, § 7: approved Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing law pertaining to stipulated premium plan insurers is totally inadequate for the proper protection of the buying public; that many of these companies, after issuing stipulated premium plan policies, fail, refuse or neglect to pay any claims on such policies; and that in order to protect the buying public and the people of this State against illegal and highly irregular practices in this phase of the insurance industry, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the effective date of this Act."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall



be in full force and effect from and after the passage and approval of this Act."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

### 23-71-101. Definition.

As used in the Arkansas Insurance Code, unless the context otherwise requires, a "stipulated premium plan insurer" is one issuing policies or certificates promising money or other benefits to a member or policyholder upon his or her disability or, upon his or her decease, to his or her legal representatives or beneficiaries designated by him or her, which money or benefit is derived from stipulated premiums collected in advance from those members or policyholders and from interest and other accumulations, and which insurer was not required, prior to January 1, 1960, to set aside a fixed policy reserve such as is required of legal reserve insurers.

**History.** Acts 1959, No. 148, § 541; 1967, No. 393, § 1; A.S.A. 1947, § 66-4402.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

### CASE NOTES

**Cited:** Drummond Citizens Ins. Co. v. United States, 298 F. Supp. 692 (E.D. Ark. 1969).

### 23-71-102. Scope.

- (a) This chapter applies only to stipulated premium plan insurers.
- (b) No provisions of the Arkansas Insurance Code shall apply to stipulated premium plan insurers unless contained or referred to in this chapter.

**History.** Acts 1959, No. 148, § 540; A.S.A. 1947, § 66-4401.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**23-71-103. Other provisions applicable.**

In addition to the provisions contained in this chapter, other chapters and provisions of the Arkansas Insurance Code shall apply to stipulated premium plan insurers, to the extent so applicable, as follows:

- (1) Sections 23-60-101 — 23-60-108 and 23-60-110, scope of code;
- (2) Section 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-301 et seq., the Insurance Commissioner;
- (3) Sections 23-63-102 — 23-63-104, 23-63-201 — 23-63-216, 23-63-301, 23-63-302, 23-63-303, and 23-63-304, authorization of insurers and general requirements, with the exception of the following sections:
  - (A) Section 23-63-205, capital funds required;
  - (B) Section 23-63-207, special surplus requirement; and
  - (C) Section 23-63-206, bond or deposit requirement;
- (4) Sections 23-60-102, 23-61-401, 23-61-402, 26-57-601 — 26-57-605, 26-57-607, 26-57-608, and 26-57-610, fees and taxes;
- (5) Provisions of § 23-63-601 et seq. as to assets and valuation of assets;
- (6) Sections 23-63-801 — 23-63-835, investments;
- (7) Section 23-64-101 et seq., agents;
- (8) Section 23-65-101 et seq., unauthorized insurers;
- (9) Sections 23-66-201 — 23-66-214, 23-66-301 — 23-66-306, 23-66-308 — 23-66-311, 23-66-313, and 23-66-314, trade practices and frauds;
- (10) Sections 23-79-101 — 23-79-107, 23-79-109 — 23-79-128, 23-79-131 — 23-79-134, and 23-79-202 — 23-79-210, the insurance contract, except §§ 23-79-131 — 23-79-134, exemption of proceeds;
- (11) Sections 23-85-101 — 23-85-131, accident and health insurance policies;
- (12) The following provisions of §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, organization and corporate procedures of domestic stock and mutual insurers:
  - (A) Section 23-69-103, inapplicability of general corporation statutes;
  - (B) Section 23-69-107, amendment of articles of incorporation;
  - (C) Section 23-69-111, corporate powers in general;
  - (D) Section 23-69-111, contributions authorized;
  - (E) Section 23-69-120, meetings of stockholders or members;
  - (F) Section 23-69-121, stockholders' voting rights;
  - (G) Section 23-69-122, proxies;
  - (H) Section 23-69-123, corrupt practices — penalty;
  - (I) Section 23-69-110, vacancies;
  - (J) Section 23-69-127, consideration for stock;
  - (K) Section 23-69-128, transfer of stock;
  - (L) Section 23-69-129, dividends to stockholders;
  - (M) Section 23-69-131, illegal dividends — penalty;
  - (N) Section 23-69-108, officers;
  - (O) Section 23-69-133, stockholders' liability;
  - (P) Section 23-69-109, prohibited pecuniary interest of officials;

- (Q) Section 23-69-134, home office and records; penalty for unlawful removal of records;
- (R) Section 23-69-135, vouchers for expenditures;
- (S) Section 23-69-136, situs of personal property for taxation;
- (T) Section 23-69-137, management and exclusive agency contracts;
- (U) Section 23-69-139, assessment of stockholders or members;
- (V) Sections 23-69-151 — 23-69-154, voluntary dissolution;
- (W) Section 23-69-156, extinguishment of unused corporate charters;
- (13) Section 23-68-101 et seq., rehabilitation and liquidation;
- (14) Section 23-62-205, reinsurance.

**History.** Acts 1959, No. 148, § 555; A.S.A. 1947, § 66-4416; Acts 1991, No. 804, § 2; 2001, No. 1566, § 13; 2001, No. 1603, § 30; 2001, No. 1604, §§ 70, 71.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### **23-71-104. Incorporation, reincorporation, or formation prohibited.**

No corporation or other entity shall be incorporated, reincorporated, or formed in this state as a stipulated premium plan insurer after January 1, 1960.

**History.** Acts 1959, No. 148, § 543; A.S.A. 1947, § 66-4404.

### **23-71-105. Reserves and nonforfeiture provisions required.**

(a) Stipulated premium insurers shall be required to maintain reserves on all life insurance policies, annuity and endowment contracts, and disability insurance policies issued on and after January 1, 1968, in the following manner:

(1) Reserves on all stipulated premium life insurance policies and annuity and endowment contracts shall be established and maintained in accordance with the provisions of the Standard Valuation Law for Life Insurance and Annuities, § 23-84-101 et seq.; and

(2) Reserves on all stipulated premium accident and health insurance policies shall be established and maintained in accordance with the provisions of § 23-63-601 et seq. as to required insurance reserves.

(b) Stipulated premium insurers shall be required to insert in all life insurance policies and annuity and endowment contracts issued on and after January 1, 1968, a provision for nonforfeiture law under the Standard Nonforfeiture Law for Life Insurance, § 23-81-201 et seq.



**History.** Acts 1959, No. 148, § 541; 1967, No. 393, § 1; A.S.A. 1947, § 66-4402; Acts 2001, No. 1566, § 14.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

#### **23-71-106. Use of “stipulated premium” prohibited — Exception.**

No insurer shall use the term “stipulated premium” in its insurance applications or contracts, or print or use that term in its policies or literature, unless lawfully authorized to transact insurance in this state on the stipulated premium plan.

**History.** Acts 1959, No. 148, § 542; A.S.A. 1947, § 66-4403.

#### **23-71-107. Articles of incorporation and capital stock.**

The articles of incorporation and paid-up capital stock of a stipulated premium plan insurer shall be the same as required of it under laws in force immediately prior to January 1, 1960.

**History.** Acts 1959, No. 148, § 543; A.S.A. 1947, § 66-4404.

### CASE NOTES

**Cited:** Drummond Citizens Ins. Co. v. United States, 298 F. Supp. 692 (E.D. Ark. 1969).

#### **23-71-108. New insurers.**

No insurer shall transact insurance on the stipulated premium plan in this state unless it lawfully had authority to transact the insurance on January 1, 1960.

**History.** Acts 1959, No. 148, § 544; A.S.A. 1947, § 66-4405.

#### **23-71-109. Insuring powers.**

On the stipulated premium plan, an insurer may insure the lives of individuals and may provide for indemnity against death or disability of the insured occasioned by sickness or accident.

**History.** Acts 1959, No. 148, § 545; A.S.A. 1947, § 66-4406.

**23-71-110. Guaranty fund deposit.**

(a)(1)(A) Every insurer shall have deposited and maintain on deposit with the Insurance Commissioner acceptable securities in amounts based upon the amount of the insurer's admitted assets as of December 31 of the preceding calendar year as follows:

- (i) \$000,001 to \$250,000 — \$50,000 minimum deposit;
- (ii) \$250,001 to \$500,000 — \$75,000 minimum deposit;
- (iii) \$500,001 to \$1,000,000 — \$100,000 minimum deposit;
- (iv) Over \$1,000,000 — \$150,000 minimum deposit.

(B) The commissioner shall have the discretion to require deposits in excess of those enumerated if such a deposit is in the best interest of the public and the insurer's policyholders.

(2) This deposit shall be known as the "guaranty fund" and shall be held for the purpose of guaranteeing the payment of any final judgment rendered against the insurer on any claim arising under any of its contracts of insurance.

(3) If the insurer fails to pay the judgment, the commissioner shall pay the judgment from the insurer's deposit and for that purpose may liquidate at current market value any securities so deposited.

(b) Upon applying the deposit or any part thereof necessary to pay any judgment, the commissioner shall so notify the insurer, requiring the insurer to fully replenish and restore the deposit to the amount previously required, as well as any additional amounts the commissioner may require, within sixty (60) days after date of notice. If the deposit is not so restored within sixty (60) days, the commissioner shall revoke the certificate of authority until the insurer is fully in compliance with this chapter.

(c)(1) The guaranty fund deposit shall not be a part of the insurer's capital stock. Commencing on and after January 1, 2002, it shall be a part of its surplus or undivided profits and shall be considered an asset and be a part of the insurance fund of the insurer.

(2) The commissioner may allow domestic insurers to augment their surplus or undivided profits over a period of up to five (5) years from August 13, 2001, to achieve compliance with the minimum amounts required in subsection (a) of this section, if immediate compliance with this section would cause the domestic insurer to be impaired or insolvent or in hazardous financial condition.

(d)(1) When an insurer desires to relinquish its business in this state, the commissioner, on application of the insurer under oath of its president or principal officer and secretary or actuary, shall publish notice of such an intention at least one (1) time a week for four (4) consecutive weeks in a newspaper of general circulation published at the state capital.

(2)(A) If, after the publication, the commissioner is satisfied that all debts and liabilities of every kind of the insurer are paid or provided for, the commissioner shall deliver up to the insurer the securities or funds held by the commissioner belonging to the insurer.

(B) No relinquishment shall be effectuated until after the insurer has bulk reinsured in another authorized insurer or has otherwise properly terminated with advance written notice all its insurance in force, after approval of its plan by the commissioner.

**History.** Acts 1959, No. 148, §§ 546, 547; A.S.A. 1947, §§ 66-4407, 66-4408; Acts 1991, No. 1123, § 6; 2001, No. 1137, § 1.

**A.C.R.C. Notes.** Acts 2001, No. 1137, § 2, provided: "The provisions of this act as to increased Guaranty Fund deposit amounts shall require compliance by all

licensed stipulated premium plan insurers commencing on and after January 1, 2002."

**Publisher's Notes.** Acts 1991, No. 1123, § 7, provided that compliance with provisions of § 6 of that Act shall be required from and after September 30, 1991.

## CASE NOTES

### ANALYSIS

Deposit.

Use of Fund.

#### Deposit.

Deposit of a mortgage signed by a party who temporarily owned farm of the president for the purpose of giving the mortgage did not meet the requirement of former similar section. *Marlin v. Harrison*, 214 Ark. 342, 216 S.W.2d 45 (1948) (decision under prior law).

#### Use of Fund.

Guaranteed deposit fund by insurance company, though primarily for use of company in payment of policy claims, upon dissolution of the company, may also be used to pay judgments taken against company on private loans made to the company. *Marlin v. Harrison*, 214 Ark. 342, 216 S.W.2d 45 (1948) (decision under prior law).

**Cited:** *Drummond Citizens Ins. Co. v. United States*, 298 F. Supp. 692 (E.D. Ark. 1969).

## 23-71-111. Policies — Liability.

(a) Every policy issued by a stipulated premium plan insurer in this state shall specify the sum of money which it promises to pay upon each contingency insured against and the time of payment after satisfactory proof of the happening of the contingency.

(b) Unless the contract has been voided by fraud or breach of its conditions and warranties, the insurer shall be obligated to the insured for payment at the times specified of the amount due under the policy.

**History.** Acts 1959, No. 148, § 548; A.S.A. 1947, § 66-4409.

## CASE NOTES

#### In General.

Amendments to this section and § 23-78-112 preclude strict enforcement of "service and merchandise-only" clauses in both burial certificates and insurance policies; however, no legislative action as yet

has been taken to amend § 23-40-109(d)(1), which provides that sellers of pre-need contracts may contract to provide merchandise and services. *Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.*, 313 Ark. 128, 854 S.W.2d 312 (1993).



**23-71-112. Benefits not subject to attachment.**

The money or other benefit, charity, relief, or aid to be paid, provided, or rendered by an insurer authorized to do business under this chapter shall not be liable to attachment or other process and shall not be seized, taken, appropriated, or applied by any legal or equitable process, by operation of law, to pay any debt or liability of a policy or certificate holder or of any beneficiary named in the policy or certificate.

**History.** Acts 1959, No. 148, § 549;  
A.S.A. 1947, § 66-4410.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Legislative Survey, Business Law, 4 U. Ark. Little Rock L.J. 579.

**23-71-113. Insolvency.**

(a) From and after January 1, 1968, the capital of a stipulated premium plan insurer shall be deemed to be impaired and the insurer shall be deemed to be insolvent when the insurer is not possessed of assets equal to all liabilities including the reserves set forth in § 23-71-105(a) together with its total issued and outstanding capital stock.

(b)(1) If the Insurance Commissioner finds a stipulated premium plan insurer to be insolvent, the commissioner shall notify the insurer of the insolvency, stating the amount thereof and allowing the insurer a reasonable period of not less than sixty (60) days in which to cure the insolvency.

(2) If the insurer fails to cure the insolvency within the period so allowed by the commissioner, then the commissioner shall immediately revoke its certificate of authority and institute proceedings for the liquidation of the insurer under §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132.

**History.** Acts 1959, No. 148, §§ 550, 551; 1967, No. 393, § 3; A.S.A. 1947, §§ 66-4411, 66-4412.

**CASE NOTES**

**Cited:** Drummond Citizens Ins. Co. v. United States, 298 F. Supp. 692 (E.D. Ark. 1969).

**23-71-114. Personal liability.**

No officer, director, stockholder, or employee shall, as such, be personally liable for the losses or liability of any stipulated premium plan insurer.

**History.** Acts 1959, No. 148, § 552;  
A.S.A. 1947, § 66-4413.

### **23-71-115. Merger, consolidation, or adoption of plan of exchange.**

(a) A stipulated premium plan insurer may merge or consolidate into another stipulated premium plan insurer or into a stock insurer authorized to transact insurance in this state, or it may adopt a plan of exchange of the outstanding stock of its stockholders in accordance with the procedures prescribed by §§ 23-69-142 — 23-69-148.

(b) A mutual assessment insurer may merge into a stipulated premium plan insurer under § 23-72-119.

**History.** Acts 1959, No. 148, § 553;  
1985, No. 804, § 12; A.S.A. 1947, § 66-4414.

### **23-71-116. Conversion to legal reserve insurer.**

A stipulated premium plan insurer may be converted to a legal reserve stock life and accident and health insurer subject to the following conditions:

(1) The insurer's articles of incorporation shall be amended to provide for transaction of insurance on a legal reserve basis;

(2) When first so converted, the insurer shall have paid-in capital stock of at least twenty-five thousand dollars (\$25,000) and surplus funds of at least twelve thousand five hundred dollars (\$12,500). At the end of the fifth calendar year next succeeding the calendar year in which the insurer was converted, its paid-in capital stock shall be not less than thirty-seven thousand five hundred dollars (\$37,500). At the end of the tenth and subsequent calendar years next succeeding the calendar year in which the insurer was so converted, its paid-up capital stock shall be not less than fifty thousand dollars (\$50,000);

(3) The insurer shall write no new business on the stipulated premium plan following the date of conversion;

(4) Stipulated premium plan business in force on the date of conversion may continue in force on the same plan. However, the insurer shall maintain separate accounts of its stipulated premium plan business and its legal reserve business;

(5) The maximum single risk retained by the insurer after conversion shall not exceed five percent (5%) of the insurer's paid-in capital stock until the paid-in capital stock amounts to one hundred thousand dollars (\$100,000) or more; and

(6) After conversion the insurer shall otherwise have the same powers and obligations as like legal reserve insurers under the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 554;  
A.S.A. 1947, § 66-4415; Acts 2001, No. 1603, § 31.

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No.

148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## CHAPTER 72

# MUTUAL ASSESSMENT LIFE AND DISABILITY INSURERS

### SECTION.

- 23-72-101. Definitions.
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- 23-72-113. Benefits and payment — Level or stipulated plan insurers.
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- 23-72-121. Insolvency.
- 23-72-122. Officers and members not individually liable.

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**Cross References.** Method of payment of claims, § 23-66-321.

**Effective Dates.** Acts 1967, No. 393, § 7: approved Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing law pertaining to stipulated premium plan insurers is totally inadequate for the proper protection of the buying public; that many of these companies, after issuing stipulated premium plan policies, fail, refuse or neglect to pay any

claims on such policies; and that in order to protect the buying public and the people of this State against illegal and highly irregular practices in this phase of the insurance industry, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the effective date of this Act."

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### 23-72-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Level or stipulated rate assessment" insurers are those incorporated mutual insurers granting insurance benefits on the assessment plan and which collected from their membership a level or stipulated monthly, quarterly, semiannual, or annual assessment or premium, which assessment or premium is not made contingent upon the hap-



pening of a certain event, but is based upon stated periodical rates and charges estimated to be sufficient for the payment of all claims and expenses; and

(2) "Pro rata assessment" insurers are incorporated mutual insurers which operate on the plan of calling assessments to pay benefits promised when the contingency insured against arises and which place their membership in groups or circles for the purpose of assessment and collection of dues.

**History.** Acts 1959, No. 148, §§ 558, 559; A.S.A. 1947, §§ 66-4503, 66-4504.

### 23-72-102. Scope.

(a) This chapter applies only to domestic and foreign mutual insurers transacting life and disability insurance on the mutual assessment plan.

(b) No provision of the Arkansas Insurance Code shall apply to such insurers unless contained or referred to in this chapter.

**History.** Acts 1959, No. 148, § 556; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-4501. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### 23-72-103. Other provisions applicable.

In addition to the provisions contained in this chapter, other chapters and provisions of the Arkansas Insurance Code shall apply to mutual assessment life and disability insurers, to the extent so applicable, as follows:

(1) Sections 23-60-101 — 23-60-108 and 23-60-110, scope of Arkansas Insurance Code;

(2) Section 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-301 et seq., the Insurance Commissioner;

(3) Sections 23-63-102 — 23-63-104, 23-63-201 — 23-63-216, 23-63-301, and 23-63-302, authorization of insurers and general requirements, with the exception of the following sections:

(A) Section 23-63-205, capital funds required;

(B) Section 23-63-207, special surplus requirement; and

(C) Section 23-63-206, bond or deposit requirement;

(4) Applicable provisions of § 23-63-601 et seq., assets and liabilities;

(5) Applicable provisions of § 23-63-801 et seq., investments;

(6) Section 23-64-101 et seq., agents, brokers, and producers;

(7) Section 23-65-101 et seq., unauthorized insurers;

(8) Sections 23-66-201 — 23-66-214, 23-66-301 — 23-66-306, 23-66-308 — 23-66-311, 23-66-313, and 23-66-314, trade practice and frauds;

(9) Sections 23-79-101 — 23-79-107, 23-79-109 — 23-79-128, 23-79-131 — 23-79-134, and 23-79-202 — 23-79-210, the insurance contract, except:

- (A) Sections 23-79-131 — 23-79-134, exemption of proceeds;
- (B) Section 23-79-204, venue; and
- (C) Section 23-79-205, registered agents for service of process;
- (10) The following provisions of §§ 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, and 23-69-149 — 23-69-156, organization and corporate procedures of domestic stock and mutual insurers:
  - (A) Section 23-69-103, inapplicability of general corporation statutes;
  - (B) Section 23-69-107, amendment of articles of incorporation;
  - (C) Section 23-69-111, corporate powers in general;
  - (D) Section 23-69-111, contributions;
  - (E) Section 23-69-120, meetings of stockholders or members;
  - (F) Section 23-69-123, corrupt practices — penalty;
  - (G) Section 23-69-110, removal of director — vacancies;
  - (H) Section 23-69-108, officers;
  - (I) Section 23-69-109, prohibited pecuniary interest of officials;
  - (J) Section 23-69-134, home office and records and penalty for unlawful removal of records;
  - (K) Section 23-69-135, voucher for expenditures;
  - (L) Section 23-69-136, situs of personal property for taxation;
  - (M) Section 23-69-137, management and exclusive agency contracts;
  - (N) Sections 23-69-151 — 23-69-154, voluntary dissolution;
  - (O) Section 23-69-155, mutual member's share of assets on liquidation; and
  - (P) Section 23-69-156, extinguishment of unused corporate charters;
- (11) Applicable provisions of § 23-68-101 et seq., rehabilitation and liquidation; and
- (12) Section 23-62-205, reinsurance.

**History.** Acts 1959, No. 148, § 578; A.S.A. 1947, § 66-4523; Acts 1991, No. 804, § 3; 2001, No. 1566, § 15.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-72-104. Minimum requirements for new insurers.

(a) No insurer shall transact mutual assessment life or disability insurance in this state unless it lawfully had authority to transact the insurance on January 1, 1960, and provided further that from and after January 1, 1968, the insurer shall be required to:

(1) Maintain reserves on all life insurance policies, annuity and endowment contracts, and disability insurance policies issued on or after January 1, 1968, in the following manner:

(A) Reserves on all life insurance policies and annuity and endowment contracts shall be established and maintained in accordance with the provisions of the Standard Valuation Law for Life Insurance and Annuities, § 23-84-101 et seq.; and

(B) Reserves on all accident and health insurance policies shall be established and maintained in accordance with the provisions of § 23-63-601 et seq.; and

(2) Insert in all life insurance policies and annuity and endowment contracts issued on and after January 1, 1968, a provision for nonforfeiture benefits in accordance with the Standard Nonforfeiture Law for Life Insurance, § 23-81-201 et seq.

(b) No insurer shall continue to be authorized to transact mutual assessment life or disability insurance in this state unless it is otherwise entitled to such authority and has:

(1) At least two thousand (2,000) members regularly paying their assessments; and

(2) Surplus funds of at least ten thousand dollars (\$10,000).

(c) No domestic insurer shall hereafter be organized to transact life or disability insurance on the mutual assessment plan.

**History.** Acts 1959, No. 148, § 557; 1967, No. 393, § 2; A.S.A. 1947, § 66-4502; Acts 2001, No. 1566, § 16.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

### 23-72-105. Bond.

(a) Every mutual assessment life and disability insurer shall have and maintain in force and on file with the Insurance Commissioner a bond in favor of the State of Arkansas in the sum of twenty thousand dollars (\$20,000), for the use of the policyholders of the insurer and their beneficiaries, with good and sufficient surety approved by the commissioner, and conditioned for the prompt payment of all assessments to parties or beneficiaries entitled thereto.

(b) The makers of the bond shall continue to be liable thereon for any violation of the conditions thereof or for any loss accruing to the policyholders of the insurer or their beneficiaries.

(c) The bond shall be renewable every two (2) years on March 1.

(d) If at any time it appears that the bond has for any cause become insufficient, the commissioner may require the insurer to replace the bond on reasonable notice.

**History.** Acts 1959, No. 148, § 560; A.S.A. 1947, § 66-4505.



**23-72-106. Refusal, suspension, or revocation of certificate of authority.**

The Insurance Commissioner shall refuse to continue or shall suspend or revoke the certificate of authority of any such insurer for any of the following causes:

- (1) If, during the preceding calendar year, the insurer scaled and reduced its accrued beneficial claims by reason of insufficient yield of assessment or revenues;
- (2) If the insurer has exceeded its powers;
- (3) If the insurer has surplus of less than ten thousand dollars (\$10,000) or has fewer than two thousand (2,000) members regularly paying their assessments; or
- (4) For other causes specified in §§ 23-63-212 and 23-63-213.

**History.** Acts 1959, No. 148, § 561;  
A.S.A. 1947, § 66-4506.

**23-72-107. Pro rata or level assessment plans.**

(a) Except as provided in § 23-72-118, a mutual assessment insurer may transact insurance on either the pro rata assessment plan only or on the level or stipulated rate plan only.

(b) Each plan shall be governed by the provisions of this chapter made specifically applicable thereto and by those provisions applicable to both plans.

**History.** Acts 1959, No. 148, § 562;  
A.S.A. 1947, § 66-4507.

**23-72-108. Insuring powers.**

(a) Mutual assessment insurers are prohibited from transacting any insurance except the granting of indemnity against or providing benefits upon death, disability, or accident.

(b) No mutual assessment insurer shall transact property, casualty, surety, or industrial insurance.

(c) For the purposes of this chapter, an "industrial insurer" is an insurer which issues policies granting life, health, and accident indemnities, basing the benefits promised on the payment by the policyholder of a stipulated weekly premium.

**History.** Acts 1959, No. 148, § 563;  
A.S.A. 1947, § 66-4508.

**23-72-109. Bylaws generally.**

(a) The insurer shall have bylaws which are not in conflict with the law of this state, to regulate and govern its affairs. Bylaws of both foreign and domestic insurers shall be subject to the applicable requirements of § 23-69-119.

(b) The bylaws shall provide for periodic meetings of the members and how special meetings may be called. At all meetings each member shall be entitled to one (1) vote only on each question coming to a vote. The member may vote in person or by written proxy, and the proxy may be given in the application for membership. No proxy shall be irrevocable.

(c) The bylaws may provide for issuance of graded membership certificates and for the grading of rates and assessments according to the ages of members.

(d) If disability benefits are promised in membership certificates, adequate provisions shall be made in the bylaws for assessments to pay disability claims and expenses incident thereto, and the assessments shall not be used for the payment of claims other than disability.

(e) Every member of the insurer is bound by the insurer's bylaws as in existence at the time of joining or as thereafter amended.

**History.** Acts 1959, No. 148, § 564;  
A.S.A. 1947, § 66-4509.

### **23-72-110. Filing and amendment of bylaws.**

(a) The insurer shall promptly file a copy of its bylaws, duly certified by its president and secretary, with the Insurance Commissioner.

(b) No amendment of bylaws shall be valid and binding upon the insurer's members until a certified copy of the amendment has been on file with the commissioner for a period of at least ten (10) days.

(c) No amendment of an insurer's bylaws affecting rates shall be effective unless and until approved by the commissioner as being reasonable or necessary.

**History.** Acts 1959, No. 148, § 565;  
A.S.A. 1947, § 66-4510.

### **23-72-111. Special provisions of pro rata assessment plan.**

In addition to the requirements under § 23-72-109, the bylaws of a pro rata assessment plan insurer:

(1) Shall clearly provide the plan of calling assessments. They may provide for assessment of each group or circle for payment of its own claims, for the assessing of groups or circles in rotation, or for assessing any group or circle, or the entire membership, for the payment of any matured claim; and

(2) May provide for the collection of assessments in advance to be used for the payment of claims and expenses.

**History.** Acts 1959, No. 148, § 566;  
A.S.A. 1947, § 66-4511.

**23-72-112. Additional assessments or adjustments of rates or benefits.**

An insurer has power to provide in its bylaws for the calling of extra, increased, or additional assessments or for adjustment of rates and benefits when the assessments and contributions from its members prove to be inadequate to meet all claims and expenses.

**History.** Acts 1959, No. 148, § 567;  
A.S.A. 1947, § 66-4512.

**23-72-113. Benefits and payment — Level or stipulated plan insurers.**

(a) A level or stipulated rate plan insurer shall specify in its policy or membership certificate the contingencies insured against, the sum of money it promises to pay or the benefits it agrees to provide, and the number of days after satisfactory proof of loss is filed within which the payment will be made or the benefit will be provided.

(b) Upon the occurrence of a contingency insured against, unless the contract has been voided by fraud or by breach of its conditions, the insurer shall be obligated to the beneficiary for payment of or providing benefits at the time and in the amount or value specified in the policy or certificate.

(c) If the insurer fails to make the payment after final judgment has been obtained upon the claim, the Insurance Commissioner shall notify the insurer not to issue any new policy or certificates until the indebtedness is fully paid. No officer or agent of the insurer shall issue any policy or certificate while the notice is in force. In addition, the insurer's certificate of authority shall be subject to suspension or revocation under § 23-63-213.

**History.** Acts 1959, No. 148, § 568;  
A.S.A. 1947, § 66-4513.

**23-72-114. Benefits not subject to attachment.**

No money or other benefits to be paid, provided, or rendered by any insurer, not to exceed one thousand dollars (\$1,000), shall be liable to attachment, garnishment, or other process, or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any member or beneficiary, or any other person who may have a right thereunder, either before or after payment.

**History.** Acts 1959, No. 148, § 569;  
A.S.A. 1947, § 66-4514.



**RESEARCH REFERENCES**

**Ark. L. Rev.** Conflict of Laws — Constitutional Law — Quasi in Rem Jurisdiction Based on Attachment of Out-of-State Defendant's Liability Insurance Policy, 23 Ark. L. Rev. 651.

**U. Ark. Little Rock L.J.** Legislative Survey, Business Law, 4 U. Ark. Little Rock L.J. 579.

**23-72-115. Notice to members of scaled and reduced claims.**

(a) Each insurer shall, on or before March 1 as to the preceding calendar year, give written notice thereof by mail to those of its members whose status and conditions of certificate or policy are similar, if the insurer has scaled and reduced its beneficial claims for the preceding year.

(b) The notice shall contain the names and addresses of the deceased members, the accrued or face value of the certificate, and the amount received by the beneficiary and shall only include all those scaled or reduced claims by reason of insufficient yield of assessments or revenue apportioned to the settlement of such claims.

(c) The notice shall have printed thereon as a heading in bold face type of not less than eighteen (18) points the words: "NOTICE AND WARNING".

**History.** Acts 1959, No. 148, § 570;  
A.S.A. 1947, § 66-4515.

**23-72-116. Pro rata plan insurer — Reclassification and rearrangement of members.**

A pro rata assessment plan insurer has power at any time to reclassify, transfer, or rearrange its members, to merge or unite circles or groups; and to unite into one (1) group or circle two (2) or more groups or circles, the membership of which has decreased below the maximum. The insurer shall not start a new group or circle so long as any other group or circle is not up to maximum. All groups and circles shall be kept up to the maximum.

**History.** Acts 1959, No. 148, § 571;  
A.S.A. 1947, § 66-4516.

**23-72-117. Reinsurance.**

(a) A mutual assessment insurer may reinsure in any authorized life insurer any single risk or part of any single risk which it may assume.

(b) The insurer may reinsure all or substantially all of its insurance in force by reinsurance in bulk as provided for in § 23-72-119.

**History.** Acts 1959, No. 148, § 572;  
A.S.A. 1947, § 66-4517.

**23-72-118. Conversion to level premium plan.**

(a) A pro rata assessment insurer, by resolution of its board of directors approved by the Insurance Commissioner, may convert the whole or any part of its membership into a level or stipulated rate division. Thereafter, laws applicable to a level or stipulated rate insurer shall apply and govern the insurer or division so converted.

(b) The insurer shall segregate the funds and income of the two (2) classes and not intermingle funds when the insurer is operating on a pro rata assessment basis and with a division on a level or stipulated rate assessment basis.

**History.** Acts 1959, No. 148, § 573;  
A.S.A. 1947, § 66-4518.

**23-72-119. Merger or bulk reinsurance or conversion.**

(a)(1) Any mutual assessment domestic insurer may merge or reinsure its outstanding policies in bulk with any domestic stipulated premium insurer operating under § 23-71-101 et seq. and, upon filing with the Insurance Commissioner, an agreement setting out the conditions of the proposed merger or bulk reinsurance, and certifying that the agreement has been approved by the boards of directors of the respective merging insurers, together with a financial statement of each such insurer.

(2) The merger shall be subject to the commissioner's approval, in accordance with the same standards as are stated in § 23-69-143.

(3) Upon approval, the membership or policyholders of the merged insurers are bound in all respects by the merger agreement as approved by the commissioner.

(b) The domestic insurer may consolidate, merge, or bulk reinsure with any solvent legal reserve life insurer by proper resolution of its board of directors and pursuant to the commissioner's approval and applicable procedure provided by §§ 23-69-143 — 23-69-145, except that approval of the plans or agreement of merger or bulk reinsurance by members of any insurer involved may be dispensed with if the plan or agreement is otherwise approved by the commissioner.

(c) A domestic insurer may convert into a legal reserve stock insurer under the procedures and conditions provided by § 23-69-141, but the insurer shall be subject to minimum capital stock and maximum risk requirement as provided in § 23-71-116 for stipulated premium plan insurers and to subdivisions (d)(3) and (4) and subdivision (d)(6) of this section.

(d) A domestic insurer may convert to a legal reserve mutual insurer under a plan filed with and approved by the commissioner as being reasonable, appropriate, and not injurious to the protection or interests of present or future policyholders of the insurer, subject to the following conditions:

(1) The insurer's articles of incorporation shall be amended to provide for transaction of business on the mutual legal reserve basis;

(2) When first so converted, the insurer shall have surplus funds of not less than fifty thousand dollars (\$50,000). At the end of the fifth calendar year next succeeding the calendar year in which the insurer was so converted, its surplus shall be not less than seventy-five thousand dollars (\$75,000). At the end of the tenth and subsequent calendar years, its surplus shall be not less than one hundred thousand dollars (\$100,000);

(3) The insurer shall write no new business on the assessment plan or reinstate any such business theretofore lapsed following the date of conversion;

(4) Assessment plan business in force on the date of conversion may continue in force on the same plan. However, the insurer shall maintain separate accounts of its assessment plan business and its legal reserve business;

(5) The maximum single risk retained by the insurer after conversion shall not exceed five percent (5%) of the insurer's surplus, until the surplus totals to one hundred thousand dollars (\$100,000) or more; and

(6) After conversion the insurer shall otherwise have the same powers and obligations as like legal reserve insurers under the Arkansas Insurance Code.

**History.** Acts 1959, No. 148, § 574; was originally enacted by Acts 1959, No. A.S.A. 1947, § 66-4519. 148. Acts 1959, No. 148 is codified as set

**Publisher's Notes.** The Arkansas Insurance Code, referred to in this section, out in the note following § 23-60-101.

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Business Law, 4 U. Ark. Little Rock L.J. 579.

### 23-72-120. Venue and service of process.

(a) Any action by a policy or certificate holder or beneficiary against an insurer or against its bond or bondsmen on any claim arising or accruing under any of its policies or certificates may be brought in any county in this state where the plaintiff, or any plaintiff in the action, may reside.

(b) If the action is against the insurer, service of summons or process may be made on the secretary or president or managing agent of the insurer.

(c) If the action is against the bond or bondspersons of the insurer, service of summons or process may be made by ordinary service as in other cases upon the several bondspersons sued.

(d) In the action it shall not be necessary to notify or summon other policyholders or beneficiaries.

(e) In the action against a foreign corporation, service of summons or process may be made upon the corporation by service of summons or process upon the registered agent pursuant to §§ 23-63-301 — 23-63-



304 or pursuant to methods specified in other laws or rules on and after January 1, 2003.

**History.** Acts 1959, No. 148, § 575; A.S.A. 1947, § 66-4520; Acts 2001, No. 1604, § 72.

### CASE NOTES

#### Claims Arising or Accruing Under Policy.

A suit against a stipulated rate assessment insurance company for damages for breach of a reinsurance contract by raising the premiums was a suit on a claim

arising or accruing under a policy; hence suit was properly brought in the county of the plaintiff's residence. *Unionaid Life Ins. Co. v. Smith*, 179 Ark. 164, 15 S.W.2d 321 (1929) (decision under prior law).

#### 23-72-121. Insolvency.

An insurer is insolvent when its reserves, its matured death claims, and its other due and unpaid obligations exceed its assets and death assessments or periodic payments called, to be called, or in process of collection.

**History.** Acts 1959, No. 148, § 576; 1967, No. 393, § 4; A.S.A. 1947, § 66-4521.

#### 23-72-122. Officers and members not individually liable.

Officers and members of a domestic insurer shall not be individually liable for the payment of any disability or death benefit provided for in the bylaws and agreements of the insurer, but the benefit shall be payable out of the funds of the insurer and in the manner provided by its bylaws.

**History.** Acts 1959, No. 148, § 577; A.S.A. 1947, § 66-4522.

## CHAPTER 73

### FARMERS' MUTUAL AID ASSOCIATIONS

#### SECTION.

- 23-73-101. Definition.
- 23-73-102. Scope.
- 23-73-103. Associations existing as of January 1, 1960.
- 23-73-104. Other provisions applicable.
- 23-73-105. Organization — Membership — Insurance coverage.
- 23-73-106. Articles of association.
- 23-73-107. Adoption of similar name prohibited.
- 23-73-108, 23-73-109. [Repealed.]
- 23-73-110. Legal existence.

#### SECTION.

- 23-73-111. Amendment of articles and bylaws.
- 23-73-112. Qualifications for certificate of authority.
- 23-73-113. Continuance of certificate of authority.
- 23-73-114. Application — Sections 23-61-201 et seq. and 23-61-301 et seq. applicable.
- 23-73-115. Management and exclusive agency contracts.
- 23-73-116. Fees.

## SECTION.

23-73-117. Conversion to mutual insurer.  
 23-73-118. Membership requirements.  
 23-73-119. Prohibited formation.  
 23-73-120. Dissolution.

## SECTION.

23-73-121. Licensing of agents.  
 23-73-122. Merger.  
 23-73-123. Indemnification.

**Effective Dates.** Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety

all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act."

Acts 2005, No. 2004, § 6: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to regulation of farmers' mutual aid associations or companies are inadequate for the protection of the public and that this act is immediately necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**Am. Jur.** 43 Am. Jur. 2d, Ins., §§ 65, 468 et seq., 508, 509, 727.

**C.J.S.** 46 C.J.S., Ins., §§ 109, 1076.

## 23-73-101. Definition.

As used in this chapter, unless the context otherwise requires, "farmer" means a farm tenant or any person who owns or cultivates or superintends the cultivation of a farm.

**History.** Acts 1959, No. 148, § 581; A.S.A. 1947, § 66-4603; Acts 1997, No. 774, § 1.

**RESEARCH REFERENCES**

**Ark. L. Notes.** Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

**23-73-102. Scope.**

(a) This chapter applies only to domestic farmers' mutual aid companies and associations.

(b) Nothing in the insurance laws of this state shall be deemed to apply to or govern either directly or indirectly farmers' mutual aid companies or associations except as contained in or referred to in this chapter.

**History.** Acts 1959, No. 148, § 579; A.S.A. 1947, § 66-4601; Acts 1997, No. 774, § 1.

**CASE NOTES****Valued Policies.**

Former section providing that other laws should not apply to farmers' mutual insurance companies did not exempt farmers' mutual associations from the

provisions of the valued policy statute. *Tedford v. Security State Fire Ins. Co.*, 224 Ark. 1047, 278 S.W.2d 89 (1955) (decision under prior law).

**23-73-103. Associations existing as of January 1, 1960.**

Any company or association lawfully organized and existing and lawfully doing business and insuring property as a farmers' mutual aid association or company as of January 1, 1960, is not required to reorganize or comply with the provisions of this chapter applicable to organization of a farmers' mutual aid association or company.

**History.** Acts 1959, No. 148, § 580; A.S.A. 1947, § 66-4602; Acts 1997, No. 774, § 1.

**23-73-104. Other provisions applicable.**

In addition to the provisions of this chapter, farmers' mutual aid companies or associations shall also be subject to the following chapters and provisions of the Arkansas Insurance Code to the extent so applicable:

(1) Sections 23-60-101 — 23-60-108 and 23-60-110, scope of Arkansas Insurance Code;

(2) Section 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-301 et seq., the Insurance Commissioner;

(3) Section 23-65-101 et seq., unauthorized insurers;

(4) Sections 23-66-201 — 23-66-214, 23-66-301 — 23-66-306, 23-66-308 — 23-66-311, 23-66-313, and 23-66-314, trade practices and frauds;



(5) Section 23-79-208, suits against insurers — damages and attorney fees, loss claims;

(6) Sections 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132, rehabilitation and liquidation;

(7) Provisions of § 23-63-601 et seq., assets and reserves and valuation of assets;

(8) Sections 23-63-801 — 23-63-833 and 23-63-835, investments;

(9) Section 23-62-205, reinsurance;

(10) Section 23-69-134, maintenance of home office and records;

(11) Section 23-64-101 et seq., agents, brokers, solicitors, adjusters, and consultants. However, company or association officers and directors that also act as agents for their companies or associations shall not be required to license as agents, if the officers and directors do not receive commissions for policy sales;

(12) Sections 23-61-701 — 23-61-705, State Insurance Department Trust Fund fees;

(13) Section 23-79-109, filing and approval of forms; and

(14) Sections 23-88-101, valued policy law and 23-88-102, paying costs of volunteer fire department services.

**History.** Acts 1959, No. 148, § 593; 1979, No. 942, § 18; A.S.A. 1947, § 66-4615; Acts 1991, No. 804, § 4; 1997, No. 774, § 1; 2001, No. 1566, § 17.

Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

**Publisher's Notes.** The Arkansas In-

### **23-73-105. Organization — Membership — Insurance coverage.**

(a) Twenty (20) or more farmers, all of whom shall be residents of this state, may make mutual pledges and give valid obligations to each other for their insurance against loss or damage by fire, tornado, lightning, cyclone, windstorm, hail, explosion with or without fire ensuing, smoke, or direct loss or damage to insured property caused by moving vehicles and airplanes, riot, riot attending a strike, and civil commotion.

(b) These associations shall not insure any property not owned by one (1) of its members.

(c) Directors of public school districts of any kind and trustees of churches may become members of such an association in their representative capacities, for the purpose of insuring schoolhouses and churches.

(d) These associations may write coverage, at their election, for collapse of buildings from the weight of ice and snow.

(e) An association shall file all forms, including policy forms, application forms, rider or endorsement forms, or forms of renewal certificate for the coverages contained in subsections (a) and (d) of this section with the Insurance Commissioner. These filings shall be for informational purposes only.

(f) The associations may also write burglary and theft, glass, leakage, and fire extinguisher equipment, livestock, miscellaneous cover-

age, and liability, provided those coverages are written as a supplement, or package commonly referred to as a homeowner or farmowner policy, to a fire insurance policy, if the commissioner approves the reinsurance agreement as to the liability portions or obligations under these policies.

(g)(1) Before an association may write coverages:

(A) The policy form shall have prior approval of the commissioner, in accordance with § 23-79-109; and

(B) An association that writes any of the coverages listed in subsection (f) of this section shall maintain a minimum of fifty thousand dollars (\$50,000) to be deposited with the commissioner in the form of securities eligible for deposit under § 23-63-903.

(2)(A) Each association shall maintain an unimpaired minimum surplus of five hundred thousand dollars (\$500,000).

(B)(i) If compliance with this section would cause the association to become impaired or insolvent, the commissioner may allow the association to augment incrementally its unimpaired minimum surplus in order for the association to achieve compliance no later than December 31, 2010.

(ii) For good cause shown in writing by an association, the commissioner may grant not more than two (2) extensions for not more than two (2) years per extension of the deadline set for compliance in subdivision (g)(2)(B)(i) of this section.

(3) However, if the association reinsures its obligations under the coverages listed in this section to the extent of one hundred percent (100%), the commissioner, in his or her discretion, may waive the deposit requirement under this section.

(4) The deposit is subject to:

(A) The payment of creditors and the prompt payment of all claims arising and accruing to any person in this state; and

(B) The conditions specified in § 23-63-909.

(h) Premiums received on policies sold containing the coverages listed in subsection (f) of this section shall be subject to the provisions of § 26-57-601 et seq. relating to premium taxes.

**History.** Acts 1959, No. 148, § 582; 1981, No. 809, § 17; 1985, No. 487, § 1; A.S.A. 1947, § 66-4604; Acts 1991, No. 1123, § 8; 1997, No. 774, § 1; 2005, No. 2004, § 1; 2007, No. 76, § 1; 2009, No. 726, § 35; 2011, No. 523, § 1.

**Amendments.** The 2007 amendment redesignated former (f)(1), (2) and (3) as present (f), (g) and (h), respectively; deleted "listed in subdivision (f)(1) of this section" from the end of the introductory language of (g)(1); deleted "After January 1, 2006" from the beginning of (g)(2)(A); deleted "subdivision (f)(2)(A)(ii)(a) of" preceding "this section" in (g)(2)(B)(i); substi-

tuted "(g)(2)(B)(i)" for "(f)(2)(A)(ii)(b)(1)" in (g)(2)(B)(ii); deleted "subdivision (f)(1) of" preceding "this section" in (g)(3); and substituted "subsection (f)" for "subdivision (f)(1)" in (h).

The 2009 amendment, in (g), deleted "or company" following "association" throughout the subsection, inserted "that writes any of the coverages listed in subsection (f) of this section" in (g)(1)(B), deleted (g)(1)(C), and made minor stylistic changes.

The 2011 amendment, in (g)(2)(B)(ii), substituted "not more than two (2) extensions for not more than two (2) years per

extension" for "a one-time extension" and deleted "for a period not to exceed two (2) years" at the end.

### **23-73-106. Articles of association.**

(a) Articles of association of any farmers' mutual aid company or association shall specify:

- (1) The name of the association or company;
- (2) The purposes for which formed;
- (3) The location of its principal or home office, which office shall be in this state;
- (4) The names and addresses of the members of its first board of directors who shall manage the association until the first meeting of the members;
- (5) The names, addresses, and places of residence of the organizers; and
- (6) Provisions relating to amendment of the articles, as provided in § 23-73-111.

(b) The articles shall be executed in duplicate and filed with the Insurance Commissioner.

**History.** Acts 1959, No. 148, § 583; A.S.A. 1947, § 66-4605; Acts 1997, No. 774, § 1.

### **23-73-107. Adoption of similar name prohibited.**

No name shall be adopted by the company or association which is so similar to any name already in use by any existing company or association organized or doing business in Arkansas as to be confusing or misleading.

**History.** Acts 1959, No. 148, § 584; A.S.A. 1947, § 66-4606; Acts 1997, No. 774, § 1.

### **23-73-108, 23-73-109. [Repealed.]**

**Publisher's Notes.** These sections, concerning bond and certificate to begin business, were repealed by Acts 1997, No. 774, § 1. They were derived from the following sources:

23-73-108. Acts 1959, No. 148, § 585; A.S.A. 1947, § 66-4607.

23-73-109. Acts 1959, No. 148, § 586; A.S.A. 1947, § 66-4608.

### **23-73-110. Legal existence.**

(a) The legal existence of the association begins from the date of the Insurance Commissioner's certificate authorizing it to begin business.

(b) Thereupon the board of directors named in its articles may:

- (1) Adopt bylaws which shall be filed with the commissioner within thirty (30) days after adoption;



- (2) Accept applications for insurance; and
- (3) Transact business of the association, except that it shall not insure any property or issue any policies until it has received a certificate of authority to transact insurance as provided for in this chapter.

**History.** Acts 1959, No. 148, § 587; A.S.A. 1947, § 66-4609; Acts 1997, No. 774, § 1.

### **23-73-111. Amendment of articles and bylaws.**

- (a) Articles of association may be amended as provided in the articles, and any such amendments shall promptly be filed with the Insurance Commissioner within thirty (30) days after its adoption.
- (b) Bylaws may be amended, as provided in the bylaws, and any such amendment shall be filed with the commissioner within thirty (30) days after its adoption.

**History.** Acts 1959, No. 148, § 588; A.S.A. 1947, § 66-4610; Acts 1997, No. 774, § 1.

### **23-73-112. Qualifications for certificate of authority.**

To qualify for and hold a certificate of authority to insure property or issue policies, the company or association shall:

- (1)(A)(i) Have at least two hundred fifty (250) members who hold policies or certificates upon at least two hundred fifty (250) separate risks.

- (ii) An association or company whose membership falls below two hundred fifty (250) members shall notify the Insurance Commissioner immediately and shall have ninety (90) days from that date to bring its membership level back up to the requisite number of two hundred fifty (250) members.

- (iii) If an association or company fails to restore the membership level to two hundred fifty (250) members within the prescribed ninety-day period, the commissioner may:

- (a) Direct the association or company to follow a course of action that will protect the assets of the association and allow for continued protection of the members; or

- (b) Place the association or company into involuntary dissolution as contained in § 23-73-120.

- (B)(i) If immediate initial compliance with subdivision (1)(A) of this section would cause a domestic association or company to be ineligible for a continued certificate of authority to operate in this state on April 11, 2005, the commissioner may allow that domestic association or company to augment its membership in increments in order for it to achieve compliance with the minimum requirements by no later than December 31, 2006.

(ii) For good cause shown in writing by an association or company, including planned action steps to achieve the minimum membership, the commissioner may grant one (1) or more extensions of the deadline set for compliance in subdivision (1)(B)(i) of this section for a period or periods not to exceed one (1) year;

(2)(A) Maintain contracts or treaties of reinsurance as necessary based on its risk and surplus level with insurance companies, excluding surplus lines insurers, licensed or otherwise registered to conduct that business in the State of Arkansas.

(B) Indemnity reinsurance contracts or treaties shall be structured to provide protection to the company or association against a reduction of the surplus to an extent that the reduction:

(i) Endangers the solvency of the company or association; or

(ii) Hinders the company's or association's ability to pay claims made by policyholders; and

(3) Fully comply with and qualify according to the other provisions of this chapter.

**History.** Acts 1959, No. 148, § 589; A.S.A. 1947, § 66-4611; Acts 1997, No. 774, § 1; 2005, No. 2004, § 2; 2007, No. 76, § 2.

**Amendments.** The 2007 amendment, in (1)(B)(ii), inserted "including planned

action steps to achieve the minimum membership," substituted "one (1) or more extensions" for "a one-time extension," and inserted "or periods"; and inserted "as necessary" in (2)(A).

### **23-73-113. Continuance of certificate of authority.**

(a) For continuance of an original certificate of authority, a farmers' mutual aid company or association shall file with the Insurance Commissioner:

(1) A concise statement of its financial condition, management, and affairs on a form satisfactory to the commissioner;

(2) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of this chapter; and

(3) Pay any fees required by the Arkansas Insurance Code to be paid for filing the accompanying documents and for the certificate of authority if granted.

(b)(1) After September 1, 2005, the commissioner shall prepare and send to each qualified farmers' mutual aid association or company a substitute Arkansas certificate of authority evidencing full licensure from the original date when the association or company was issued a certificate of authority.

(2)(A) A certificate issued under subdivision (b)(1) of this section shall:

(i) Be and remain the property of the State of Arkansas;

(ii) Render any previous certificate of authority null and void as of the effective date of the new certificate;

(iii) Remain in force and effect until it expires or is suspended, revoked, or surrendered; and

(iv) Be continuous, subject to compliance with annual fee and reporting requirements.

(B) The association or company shall promptly deliver the certificate to the commissioner upon the certificate's expiration, suspension, revocation, or surrender.

(C)(i) If for any reason the association or company is not entitled to a continuation of the certificate of authority, the commissioner:

(a) May refuse to continue the certificate; and

(b) Shall give either written or electronic notice of the refusal to continue the certificate to the association or company.

(ii) The certificate of authority shall expire on the next May 1 following the notice provided in subdivision (b)(2)(C)(i)(b) of this section.

(c) After notice and a hearing, the commissioner may suspend or revoke a certificate of authority if the association or company:

(1) No longer meets the requirements for holding a certificate of authority or is impaired or insolvent;

(2) Is using methods or practices in the conduct of its business that unreasonably expose its members, policyholders, or the public to injury;

(3) Has refused to be examined or to produce its accounts, records, or files for examination when required by the commissioner, or if any of its officers, directors, or key personnel have refused to give information with respect to the association's or company's affairs when required by the commissioner;

(4) Has failed to pay a final judgment against it; or

(5) Has violated or failed to comply with any applicable provision of the Arkansas Code or any lawful order or regulation of the commissioner.

**History.** Acts 1959, No. 148, § 590; A.S.A. 1947, § 66-4612; Acts 1997, No. 774, § 1; 2005, No. 2004, § 3.

**Publisher's Notes.** The Arkansas In-

surance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

## **23-73-114. Application — Sections 23-61-201 et seq. and 23-61-301 et seq. applicable.**

Section 23-61-201 et seq. and § 23-61-301 et seq. shall be applicable to farmers' mutual aid companies and associations.

**History.** Acts 1959, No. 148, § 591; A.S.A. 1947, § 66-4613; Acts 1997, No. 774, § 1.

## **23-73-115. Management and exclusive agency contracts.**

(a)(1) No farmers' mutual aid company or association shall make any contract whereby any person is granted or is to enjoy in fact the management of the company or association or to have the controlling or preemptive right to produce substantially all insurance business for the



company or association, unless the contract is filed with and approved by the Insurance Commissioner.

(2) The contract shall be deemed approved, unless disapproved by the commissioner within thirty (30) days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within the thirty (30) days.

(3) Any disapproval shall be delivered to the company or association in writing, stating the grounds therefor.

(b) The commissioner shall disapprove any contract if the commissioner finds that it:

- (1) Subjects the company or association to excessive charges;
- (2) Is to extend for an unreasonable length of time;
- (3) Does not contain fair and adequate standards of performance;
- (4) Grants the management of the association, to the substantial exclusion of its board of directors, to any person, corporation, partnership, joint venture, limited partnership, or limited liability company;
- (5) Requires the association to guarantee the manager's obligation or performance to anyone other than the association;
- (6) Allows the manager to assign its rights under the agreement to a third party without the consent of the board of directors and the commissioner; or
- (7) Contains other inequitable provisions which impair the proper interests of the company or association.

(c) The commissioner, in his or her discretion, may require submission of a contract for review at any time if he or she believes a review would be in the best interest of policyholders of the company or association.

(d)(1) No association shall indemnify or insure its manager's obligations to any other person or entity, unless by operation of law.

(2) To the extent allowed by law, any indemnification by the association shall be limited to the extent of any insurance or reinsurance coverages applicable to the loss indemnified or insured.

(e) The association shall disclose to the commissioner the name of any member of its board of directors that is also an officer, stockholder, agent, partner, limited partner, limited liability company member, joint venturer, or employee of the manager.

(f) The acts of the manager may be examined as if it were the association.

(g) The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this section.

**History.** Acts 1959, No. 148, § 593.1, as added by Acts 1983, No. 522, § 34; A.S.A. 1947, § 66-4616; Acts 1997, No. 774, § 1; 2001, No. 1811, § 1.

**Publisher's Notes.** Acts 1983, No. 522, § 51, provided, in part, that the act would be cumulative of prior laws, and that no

prior law or part of a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of

a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

### **23-73-116. Fees.**

Farmers' mutual aid companies or associations shall pay no annual fees or other charges except as required under the State Insurance Department Trust Fund Act, § 23-61-701 et seq., and under §§ 23-73-113 and 23-73-114.

**History.** Acts 1959, No. 148, § 592; A.S.A. 1947, § 66-4614; Acts 1997, No. 774, § 1.

### **23-73-117. Conversion to mutual insurer.**

(a) A farmers' mutual aid association as provided for by this chapter may be converted to a mutual insurer as defined in § 23-69-102 under any plan or procedure which may be approved by the order of the Insurance Commissioner after a hearing thereon.

(b) The commissioner shall approve a plan or procedure if he or she finds that:

(1) The plan would not be contrary to law and would not be contrary to the interest of insureds or the public; and

(2) The plan has been approved by a vote of not less than two-thirds ( $\frac{2}{3}$ ) of the members present or represented by proxy at the meeting, or such greater majority as may be otherwise provided in the association's bylaws. Voting shall be conducted by written ballot which shall be signed by the member, on a ballot form approved by the commissioner prior to voting.

(c) Upon conversion, the association shall possess and thereafter maintain unimpaired surplus as regards policyholders of not less than seven hundred fifty thousand dollars (\$750,000).

(d) Upon conversion to a mutual insurer as provided for herein, the association shall be subject to and comply with all laws and regulations applicable to mutual insurers.

(e) Any association so converted shall be authorized to write only those lines for which it was authorized to write as a farmers' mutual aid association. However, the converted company may seek to have its certificate of authority amended to write additional lines.

(f) The association shall have a period of time which shall be specified in the commissioner's order to complete the conversion.

(g) Any association converted to a mutual insurer under the provisions of this section shall be designated as a "mutual insurer", and that designation shall appear immediately following its name on all policies, financial statements, and other documents where its name appears.

**History.** Acts 1985, No. 489, § 1; A.S.A. 1947, § 66-4617; Acts 1997, No. 774, § 1.

**23-73-118. Membership requirements.**

The total membership of the association shall be at all times not less than the number of members required by § 23-73-112.

**History.** Acts 1997, No. 774, § 1.

**23-73-119. Prohibited formation.**

No farmers' mutual aid association or company shall be formed or incorporated after July 1, 1997, other than as provided in § 23-73-122.

**History.** Acts 1997, No. 774, § 1.

**23-73-120. Dissolution.**

(a) VOLUNTARY.

(1) An association or company may discontinue its operations and settle its affairs at any meeting of its members, due notice of the time, place, and purpose of which shall have been given to its members and the Insurance Commissioner, by a vote of two-thirds ( $\frac{2}{3}$ ) of the members present or represented by proxy at the meeting.

(2) Voting shall be conducted by written ballot which shall be signed by the member, on a ballot form approved by the commissioner, prior to voting.

(3)(A) After the members have voted to dissolve, the association or company shall file a plan of dissolution with the commissioner for approval.

(B) The dissolution plan must include provisions that:

(i) Allow current policyholders to obtain similar coverage with another licensed insurer or farmers' mutual aid association or company; and

(ii) Designate a committee of policyholders to liquidate assets and pay debts or expenses.

(4) After the commissioner has approved the dissolution plan, the designated committee shall liquidate any assets and pay the debts and expenses of the association or company.

(5) Upon final settlement of all the affairs of the association by the committee, it shall make a final report and accounting of the proceedings of the dissolutions which shall be signed by its members and be filed with and approved by the commissioner.

(6) If the commissioner approves the final report, the commissioner shall transmit to the committee a certificate of approval and thereupon the association shall be deemed dissolved and shall cease to exist. The commissioner shall certify the dissolution to the Secretary of State.

(7) The committee shall have its necessary and reasonable expenses reimbursed in the dissolution of the association or company as approved by the commissioner.

(b) INVOLUNTARY. An association or company shall be statutorily dissolved in accordance with the provisions of §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132.



**History.** Acts 1997, No. 774, § 1; 2005, No. 2004, § 4.

### **23-73-121. Licensing of agents.**

Agents shall be licensed and issued a limited line license in accordance with § 23-64-101 et seq.

**History.** Acts 1997, No. 774, § 1.

### **23-73-122. Merger.**

(a) Two (2) or more farmers' mutual aid associations or companies may merge as provided in this section. To effect a merger, it shall be necessary:

(1) That the board of directors of each of the associations shall propose a plan of merger and pass a resolution to the effect that the merger is advisable and containing the proposed name of the association, as merged, its principal office, and the names of its first board of directors and officers;

(2) That an annual or special meeting of the policyholders of each of the associations shall be held, a notice of which meeting shall be mailed to each of the policyholders thereof at least thirty (30) days prior to the holding thereof, and which notice shall embody the resolution adopted by the board of directors, as provided in subdivision (a)(1) of this section;

(3) That a majority of the policyholders of each of the associations present or represented at these meetings shall, by resolution, approve and ratify the action of the directors, as provided for in subdivision (a)(1) of this section; and

(4) That the plan of merger, proceeding, and resolutions be filed with and approved by the Insurance Commissioner.

(b) When full copies of these proceedings have been filed with the commissioner, which copies shall be certified by the president and secretary of the respective associations and duly verified by these officers, and approved of by him or her, the merger of these companies shall be deemed to be complete, and the company so continuing the business shall be deemed to have fully assumed all of the obligations, liabilities, and risks and to be the owner of all the assets of the associations so merging.

(c) If this merger is made under any new name, the filings of these proceedings and the approval of same by the commissioner shall be sufficient to constitute the merged company an association, with all the powers and privileges, and subject to all the limitations, of a farmers' mutual aid association or company under the laws of the state.

**History.** Acts 1997, No. 774, § 1.

**23-73-123. Indemnification.**

(a) A company or association may indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) Acted in good faith;

(3) Received no improper personal benefit;

(4) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5)(A) Reasonably believed that the conduct was in the best interests of the company or association, or reasonably believed that the conduct was not opposed to the best interests of the company or association.

(B) If the person's acts or omissions complained of in the proceeding relate to the conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the company or association if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) **INSURANCE.** A company or association may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the association, is or was serving at the request of the company or association as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the company or association would have been required to indemnify the person against the liability under the provisions of this section.

(c) **INDEMNIFICATION OF OTHER PERSONS.** Nothing in this section shall be construed to limit the power of the company or association to indemnify other persons by contract or otherwise.

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